

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
RC PETITION

DO NOT WRITE IN THIS SPACE

Case No.


3-RC-289801

Date Filed

2/1/2022

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov/, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. **The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.**

2a. Name of Employer: Starbucks Corporation		2b. Address(es) of Establishment(s) involved (Street and number, City, State, ZIP code): 1394 Mt. Hope Ave., Rochester, NY 14620	
3a. Employer Representative - Name and Title: Kevin Johnson, President and CEO (see attached for Shelby Young)		3b. Address (if same as 2b - state same): 2401 Utah Avenue South, Suite 80 Seattle, WA 98134	
3c. Tel. No. 206-318-2212	3d. Cell No.	3e. Fax No.	3f. E-Mail Address kevin.johnson@starbucks.com
4a. Type of Establishment (Factory, mine, wholesaler, etc.) Coffee shop		4b. Principal Product or Service Food and beverage	5a. City and State where unit is located: Rochester, NY
5b. Description of Unit Involved: Included: All full-time and regular part-time Baristas, Shift Supervisors, Asst. Store Managers Excluded: Store Managers; office clericals, guards, and supervisors as defined by the Act			6a. Number of Employees in Unit: 41 6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Check One: <input type="checkbox"/> 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (If no reply received, so state). <input type="checkbox"/> 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.			
8a. Name of Recognized or Certified Bargaining Agent (If none, so state) None		8b. Address:	
8c. Tel. No.	8d. Cell No.	8e. Fax No.	8f. E-Mail Address
8g. Affiliation, if any:		8h. Date of Recognition or Certification	8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)
9. Is there now a strike or picketing at the Employer's establishment(s) involved? No If so, approximately how many employees are participating? _____ (Name of Labor Organization) _____, has picketed the Employer since (Month, Day, Year) _____			
10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state) None			
10a. Name		10b. Address	10c. Tel. No.
			10d. Cell No.
			10e. Fax No.
			10f. E-Mail Address
11. Election Details: If the NLRB conducts and election in this matter, state your position with respect to any such election:			11a. Election Type: <input type="checkbox"/> Manual <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail
11b. Election Date(s): 2/21/22		11c. Election Time(s): N/A	11d. Election Location(s): N/A
12a. Full Name of Petitioner (including local name and number): Workers United		12b. Address (street and number, city, State and ZIP code): 2954 Main Street, Suite 556 Buffalo, NY 14214	
12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state): Workers United, a/w SEIU			
12d. Tel. No. 585-473-3280	12e. Cell No.	12f. Fax No.	12g. E-Mail Address (b) (6), (b) (7)(C)@trjb.org
13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.			
13a. Name and Title: Ian Hayes, Attorney		13b. Address (street and number, city, State and ZIP code): Hayes Dolce 471 Voorhees Ave., Buffalo, NY 14216	
13c. Tel. No. 716-608-3427	13d. Cell No.	13e. Fax No.	13f. E-Mail Address ihayes@hayesdolce.com
I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.			
Name (Print) Ian Hayes		Signature 	Title Attorney
			Date 01/31/22

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

Attachment to RC Petition

Section 3- Employer Representative

Shelby Young
District Manager
shyoung@starbucks.com



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 3
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

Agency Website: www.nlr.gov
Telephone: (716)551-4931
Fax: (716)551-4972



Download
NLRB
Mobile App

February 1, 2022

URGENT

Workers United
2954 Main Street, Suite 556
Buffalo, NY 14214

Re: Starbucks Corporation
Case 03-RC-289801

Dear Sir or Madam:

The enclosed petition that you filed with the National Labor Relations Board (NLRB) has been assigned the above case number. This letter tells you how to contact the Board agent who will be handling this matter; explains your obligation to provide the originals of the showing of interest and the requirement that you complete and serve a Responsive Statement of Position form in response to each timely filed and served Statement(s) of Position; notifies you of a hearing; describes the employer's obligation to post and distribute a Notice of Petition for Election, complete a Statement of Position and provide a voter list; requests that you provide certain information; notifies you of your right to be represented; and discusses some of our procedures including how to submit documents to the NLRB.

Investigator: This petition will be investigated by Field Examiner THOMAS A. MILLER whose telephone number is (716)398-7004. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. The Board agent may also contact you and the other party or parties to schedule a conference meeting or telephonic or video conference for some time before the close of business the day following receipt of the final Responsive Statement(s) of Position. This will give the parties sufficient time to determine if any issues can be resolved prior to hearing or if a hearing is necessary. If the agent is not available, you may contact Regional Director LINDA M. LESLIE whose telephone number is (716)398-7017. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

Showing of Interest: If the Showing of Interest you provided in support of your petition was submitted electronically or by fax, the original documents which constitute the Showing of Interest containing handwritten signatures must be delivered to the Regional office within **2 business days**. If the originals are not received within that time the Region will dismiss your petition.

Notice of Hearing: Enclosed is a Notice of Representation Hearing to be conducted at **10:00 a.m. on Tuesday, February 22, 2022** at **via a videoconference call**, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive

days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, we will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party showing good cause, the regional director may postpone the hearing. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Posting and Distribution of Notice: The Employer must post the enclosed Notice of Petition for Election by February 8, 2022 in conspicuous places, including all places where notices to employees are customarily posted. If it customarily communicates electronically with its employees in the petitioned-for unit, it must also distribute the notice electronically to them. The Employer must maintain the posting until the petition is dismissed or withdrawn or this notice is replaced by the Notice of Election. Failure to post or distribute the notice may be grounds for setting aside the election if proper and timely objections are filed.

Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, the Employer is required to complete the enclosed Statement of Position form, have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition by **noon Eastern Time on February 11, 2022**. The Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the Employer contends that the proposed unit is inappropriate, it must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The Employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit.

Required Responsive Statement of Position (RSOP): In accordance with Section 102.63(b) of the Board's Rules, following timely filing and service of a Statement of Position, the petitioner is required to complete the enclosed Responsive Statement of Position form addressing issues raised in any Statement(s) of Position. The petitioner must file a complete, signed RSOP in response to all other parties' timely filed and served Statement of Position, with all required attachments, with this office and serve it on all parties named in the petition such that it is received by them by **noon Eastern Time on February 16, 2022**. This form solicits information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. **This form must be e-Filed, but unlike other e-Filed documents, will not be timely if filed on the due date but after noon Eastern Time.** If you have questions about this form or would like assistance in filling out this form, please contact the Board agent named above.

Failure to Supply Information: Failure to supply the information requested by the RSOP form may preclude you from litigating issues under Section 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§ 102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Voter List: If an election is held in this matter, the Employer must transmit to this office and to the other parties to the election, an alphabetized list of the full names and addresses of all eligible voters, including their shifts, job classifications, work locations, and other contact information including available personal email addresses and available personal home and cellular telephone numbers. Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. The list must be electronically filed with the Region and served electronically on the other parties. To guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the Employer must file the voter list with the Regional Office. However, a petitioner and/or union entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483, which is available on the NLRB's website or from an NLRB office. A waiver will not be effective unless all parties who are entitled to the voter list agree to waive the same number of days.

Information Needed Now: Please submit to this office, as soon as possible, the following information needed to handle this matter:

- (a) The correct name of the Union as stated in its constitution or bylaws.
- (b) A copy of any existing or recently expired collective-bargaining agreements, and any amendments or extensions, or any recognition agreements covering any employees in the petitioned-for unit.
- (c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.
- (d) The name and contact information for any other labor organization (union) claiming to represent or have an interest in any of the employees in the petitioned-for unit and for any employer who may be a joint employer of the employees in the proposed unit. Failure to disclose the existence of an interested party may delay the processing of the petition.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before the NLRB. In view of our policy of processing these cases expeditiously, if you wish to be represented, you should obtain representation promptly. Your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any “inside knowledge” or favored relationship with the NLRB. Their knowledge regarding this matter was obtained only through access to information that must be made available to any member of the public under the Freedom of Information Act.

Procedures: Pursuant to Section 102.5 of the Board’s Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency’s web site (www.nlrb.gov). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determinations solely based on the documents and evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the petition.

Information about the NLRB and our customer service standards is available on our website, www.nlrb.gov, or from an NLRB office upon your request. We can provide assistance

for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in dark ink, reading "Linda M. Leslie". The signature is written in a cursive, flowing style.

LINDA M. LESLIE
Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)
6. Responsive Statement of Position (Form 506)

cc: Ian Hayes, Attorney at Law
Hayes Dolce
471 Voorhees Avenue
Buffalo, NY 14216



National Labor Relations Board



NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that Workers United has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 03-RC-289801 seeking an election to become certified as the representative of the employees of Starbucks Corporation in the unit set forth below:

All full-time and regular part-time Baristas, Shift Supervisors, Asst. Store Managers. Excluded: Store Managers; office clericals, guards, and supervisors as defined by the Act.

This notice also provides you with information about your basic rights under the National Labor Relations Act, the processing of the petition, and rules to keep NLRB elections fair and honest.

YOU HAVE THE RIGHT under Federal Law

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of your own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustments).

PROCESSING THIS PETITION

Elections do not necessarily occur in all cases after a petition is filed. **NO FINAL DECISIONS HAVE BEEN MADE YET** regarding the appropriateness of the proposed unit or whether an election will be held in this matter. If appropriate, the NLRB will first see if the parties will enter into an election agreement that specifies the method, date, time, and location of an election and the unit of employees eligible to vote. If the parties do not enter into an election agreement, usually a hearing is held to receive evidence on the appropriateness of the unit and other issues in dispute. After a hearing, an election may be directed by the NLRB, if appropriate.

IF AN ELECTION IS HELD, it will be conducted by the NLRB by secret ballot and Notices of Election will be posted before the election giving complete details for voting.

ELECTION RULES

The NLRB applies rules that are intended to keep its elections fair and honest and that result in a free choice. If agents of any party act in such a way as to interfere with your right to a free election, the election can be set aside by the NLRB. Where appropriate the NLRB provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with employees' rights and may result in setting aside the election:

- Threatening loss of jobs or benefits by an employer or a union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or, if the election is conducted by mail, from the time and date the ballots are scheduled to be sent out by the Region until the time and date set for their return
- Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a union or an employer to influence their votes

Please be assured that IF AN ELECTION IS HELD, every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with the NLRB in maintaining basic principles of a fair election as required by law. The NLRB as an agency of the United States Government does not endorse any choice in the election.

For additional information about the processing of petitions, go to www.nlr.gov or contact the NLRB at (716)551-4931.

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED BY ANYONE. IT MUST REMAIN POSTED WITH ALL PAGES SIMULTANEOUSLY VISIBLE UNTIL REPLACED BY THE NOTICE OF ELECTION OR THE PETITION IS DISMISSED OR WITHDRAWN.



National Labor Relations Board





**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3**



Starbucks Corporation Employer and Workers United Petitioner	Case 03-RC-289801
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NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 10:00 AM on **Tuesday, February 22, 2022** and on consecutive days thereafter until concluded, at the National Labor Relations Board offices located at via a videoconference call, , a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Starbucks Corporation must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **noon** Eastern time on February 11, 2022. Following timely filing and service of a Statement of Position by Starbucks Corporation, the Petitioner must complete its Responsive Statement of Position(s) responding to the issues raised in the Employer's and/or Union's Statement of Position and file them and all attachments with the Regional Director and serve them on the parties named in the petition such they are received by them no later than **noon** Eastern on February 16, 2022.

Pursuant to Section 102.5 of the Board's Rules and Regulations, all documents filed in cases before the Agency must be filed by electronically submitting (E-Filing) through the Agency's website (www.nlrb.gov), unless the party filing the document does not have access to the means for filing electronically or filing electronically would impose an undue burden. Documents filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#)

The Statement of Position and Responsive Statement of Position must be E-Filed but, unlike other E-Filed documents, must be filed by **noon** Eastern on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position and Responsive Statement of Position are not required to be filed. If an election agreement is signed by all parties and returned to the Regional office after the due date of the Statement of Position but before the due date of the Responsive Statement of Position, the Responsive Statement of Position is not required to be filed.

Dated: February 1, 2022

/s/Linda M. Leslie

LINDA M. LESLIE
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 03
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

Starbucks Corporation Employer and Workers United Petitioner	Case 03-RC-289801
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AFFIDAVIT OF SERVICE OF: Petition dated February 1, 2022, Notice of Representation Hearing dated February 1, 2022, Description of Procedures in Certification and Decertification Cases (Form NLRB-4812), Notice of Petition for Election, and Statement of Position Form (Form NLRB-505).

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on February 1, 2022, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

Alan I. Model, Attorney at Law
Littler Mendelson, PC
One Newark Center
8th Floor
Newark, NJ 07102-5235
amodel@littler.com
Fax: (973)755-0439

Kevin Johnson, President and CEO
Starbucks Corporation
2401 Utah Avenue South
Suite 80
Seattle, WA 98134
kevin.johnson@starbucks.com

Shelby Young, District Manager
Starbucks Corporation
1394 Mt. Hope
Rochester, NY 14620
shyoung@starbucks.com

Ian Hayes, Attorney at Law
Hayes Dolce
471 Voorhees Avenue
Buffalo, NY 14216
ihayes@hayesdolce.com

Workers United
2954 Main Street, Suite 556
Buffalo, NY 14214

February 1, 2022

Date

Andrea Seyfried, Designated Agent of NLRB

Name

/s/ Andrea Seyfried

Signature

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

**DESCRIPTION OF REPRESENTATION CASE PROCEDURES
IN CERTIFICATION AND DECERTIFICATION CASES**

The National Labor Relations Act grants employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity. A party may file an RC, RD or RM petition with the National Labor Relations Board (NLRB) to conduct a secret ballot election to determine whether a representative will represent, or continue to represent, a unit of employees. An **RC** petition is generally filed by a union that desires to be certified as the bargaining representative. An **RD** petition is filed by employees who seek to remove the currently recognized union as the bargaining representative. An **RM** petition is filed by an employer who seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status. This form generally describes representation case procedures in RC, RD and RM cases, also referred to as certification and decertification cases.

Right to be Represented – Any party to a case with the NLRB has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at www.nlr.gov or forward it to the NLRB Regional Office handling the petition as soon as possible.

Filing and Service of Petition – A party filing an RC, RD or RM petition is required to serve a copy of its petition on the parties named in the petition along with this form and the Statement of Position form. The petitioner files the petition with the NLRB, together with (1) a certificate showing service of these documents on the other parties named in the petition, and (2) a showing of interest to support the petition. The showing of interest is not served on the other parties.

Notice of Hearing – After a petition in a certification or decertification case is filed with the NLRB, the NLRB reviews the petition, certificate of service, and the required showing of interest for sufficiency, assigns the petition a case number, and promptly sends letters to the parties notifying them of the Board agent who will be handling the case. In most cases, the letters include a Notice of Representation Hearing. Except in cases presenting unusually complex issues, this pre-election hearing is set for a date 14 business days (excluding weekends and federal holidays) from the date of service of the notice of hearing. Once the hearing begins, it will continue day to day until completed absent extraordinary circumstances. The Notice of Representation Hearing also sets the due date for filing and serving the Statement(s) of Position and the Responsive Statement of Position(s). Included with the Notice of Representation Hearing are the following: (1) copy of the petition, (2) this form, (3) Statement of Position for non-petitioning parties, (4) petitioner's Responsive Statement of Position, (5) Notice of Petition for Election, and (6) letter advising how to contact the Board agent who will be handling the case and discussing those documents.

Hearing Postponement: Requests to postpone the hearing are not routinely granted, but the regional director may postpone the hearing for good cause. A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should include the positions of the other parties regarding the postponement. The request must be filed electronically ("E-Filed") on the Agency's website (www.nlr.gov) by following the instructions on the website. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Statement of Position Form and List(s) of Employees – The Statement of Position form solicits commerce and other information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. In an **RC** or **RD** case, as part of its Statement of Position form, the employer also provides a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional

form for the list is provided on the NLRB website at www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx

Ordinarily the Statement of Position must be filed with the Regional Office and served on the other parties such that it is received by them by noon 8 business days from the issuance of the Notice of Hearing. The regional director may postpone the due date for filing and serving the Statement of Position for good cause. The Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Responsive Statement of Position – Petitioner's Responsive Statement(s) of Position solicits a response to the Statement(s) of Position filed by the other parties and further facilitates entry into election agreements or streamlines the preelection hearing. A petitioner must file a Responsive Statement of Position in response to each party's Statement of Position addressing each issue in each Statement of Position(s), if desired. In the case of an RM petition, the employer-petitioner must also provide commerce information and file and serve a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. Ordinarily, the Responsive Statement of Position must be electronically filed with the Regional Office and served on the other parties such that it is received by noon 3 business days prior to the hearing. The regional director may postpone the due date for filing and serving the Responsive Statement of Position for good cause. The Responsive Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Responsive Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Responsive Statement of Position due date. If a party wishes to request both a postponement of the hearing and a Postponement of the Responsive Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Posting and Distribution of Notice of Petition for Election – Within 5 business days after service of the notice of hearing, the employer must post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and must also distribute it electronically to the employees in the petitioned-for unit if the employer customarily communicates with these employees electronically. The employer must maintain the posting until the petition is dismissed or withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election if proper and timely objections are filed.

Election Agreements – Elections can occur either by agreement of the parties or by direction of the regional director or the Board. Three types of agreements are available: (1) a Consent Election Agreement (Form NLRB-651); (2) a Stipulated Election Agreement (Form NLRB-652); and (3) a Full Consent Agreement (Form NLRB-5509). In the Consent Election Agreement and the Stipulated Election Agreement, the parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent. In the Consent Agreement, the parties also agree that post-election matters (election objections or determinative challenged ballots) will be resolved with finality by the regional director; whereas in the Stipulated Election Agreement, the parties agree that they may request Board review of the regional director's post-election determinations. A Full Consent Agreement provides that the regional director will make final determinations regarding all pre-election and post-election issues.

Hearing Cancellation Based on Agreement of the Parties – The issuance of the Notice of Representation Hearing does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments and the Board agent assigned to the case will work with the parties to enter into an election agreement, so the parties can avoid the time and expense of participating in a hearing.

Hearing – A hearing will be held unless the parties enter into an election agreement approved by the regional director or the petition is dismissed or withdrawn.

Purpose of Hearing: The primary purpose of a pre-election hearing is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit

appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which a labor organization has been certified or is being currently recognized by the employer as the bargaining representative.

Issues at Hearing: Issues that might be litigated at the pre-election hearing include: jurisdiction; labor organization status; bars to elections; unit appropriateness; expanding and contracting unit issues; inclusion of professional employees with nonprofessional employees; seasonal operation; potential mixed guard/non-guard unit; and eligibility formulas. At the hearing, the timely filed Statement of Position and Responsive Statement of Position(s) will be received into evidence. The hearing officer will not receive evidence concerning any issue as to which the parties have not taken adverse positions, except for evidence regarding the Board's jurisdiction over the employer and evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

Preclusion: At the hearing, a party will be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or Responsive Statement of Position(s) or to place in dispute in timely response to another party's Statement of Position or response, except that no party will be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. As set forth in §102.66(d) of the Board's rules, if the employer fails to timely furnish the lists of employees, the employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Conduct of Hearing: If held, the hearing is usually open to the public and will be conducted by a hearing officer of the NLRB. Any party has the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer also has the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses will be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Parties appearing at any hearing who have or whose witnesses have disabilities falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the regional director as soon as possible and request the necessary assistance.

Official Record: An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (Copies of exhibits should be supplied to the hearing officer and other parties at the time the exhibit is offered in evidence.) All statements made at the hearing will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the regional director.

Motions and Objections: All motions must be in writing unless stated orally on the record at the hearing and must briefly state the relief sought and the grounds for the motion. A copy of any motion must be served immediately on the other parties to the proceeding. Motions made during the hearing are filed with the hearing officer. All other motions are filed with the regional director, except that motions made after the transfer of the record to the Board are filed with the Board. If not E-Filed, an original and two copies of written motions shall be filed. Statements of reasons in support of motions or objections should be as concise as possible. Objections shall not be deemed waived by further participation in the hearing. On appropriate request, objections may be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

Election Details: Prior to the close of the hearing the hearing officer will: (1) solicit the parties' positions (but will not permit litigation) on the type, date(s), time(s), and location(s) of the election and the eligibility period; (2) solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election if an election is directed; (3) inform the parties that the regional director will issue a decision as soon as practicable and will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and (4) inform the parties of their obligations if the director directs an election and of the time for complying with those obligations.

Oral Argument and Briefs: Upon request, any party is entitled to a reasonable period at the close of the hearing for oral argument, which will be included in the official transcript of the hearing. At any time before the close of the hearing, any party may file a memorandum addressing relevant issues or points of law. Post-hearing briefs shall be due within 5 business days of the close of the hearing. The hearing officer may allow up to 10 additional business days for such briefs prior to the close of hearing and for good cause. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the regional director. Briefs including electronic documents, filed with the Regional Director must be formatted as double-spaced in an 8½ by 11 inch format and must be e-filed through the Board's website, www.nlr.gov.

Regional Director Decision - After the hearing, the regional director issues a decision directing an election, dismissing the petition or reopening the hearing. A request for review of the regional director's pre-election decision may be filed with the Board at any time after issuance of the decision until 10 business days after a final disposition of the proceeding by the regional director. Accordingly, a party need not file a request for review before the election in order to preserve its right to contest that decision after the election. Instead, a party can wait to see whether the election results have mooted the basis of an appeal. The Board will grant a request for review only where compelling reasons exist therefor.

Voter List – The employer must provide to the regional director and the parties named in the election agreement or direction of election a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular ("cell") telephone numbers) of all eligible voters. (In construction industry elections, unless the parties stipulate to the contrary, also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.) The employer must also include in a separate section of the voter list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge. The list of names must be alphabetized (overall or by department) and be in the same Microsoft Word file (or Microsoft Word compatible file) format as the initial lists provided with the Statement of Position form unless the parties agree to a different format or the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list must be filed electronically with the regional director and served electronically on the other parties named in the agreement or direction. To be timely filed and served, the voter list must be received by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction of elections unless a longer time is specified in the agreement or direction. A certificate of service on all parties must be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

Waiver of Time to Use Voter List – Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 calendar days after the date when the employer must file the voter list with the Regional Office. However, the parties entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.

Election – Information about the election, requirements to post and distribute the Notice of Election, and possible proceedings after the election is available from the Regional Office and will be provided to the parties when the Notice of Election is sent to the parties.

Withdrawal or Dismissal – If it is determined that the NLRB does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the regional director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A STATEMENT OF POSITION FORM

Completing and Filing this Form: The Notice of Hearing indicates which parties are responsible for completing the form. If you are required to complete the form, you must have it signed by an authorized representative and file a completed copy (including all attachments) with the RD and serve copies on all parties named in the petition by the date and time established for its submission. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must EFile your Statement of Position at www.nlrb.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed.**

Note: Non-employer parties who complete this Statement of Position are NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7.

Required Lists: The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx).

Consequences of Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
STATEMENT OF POSITION

DO NOT WRITE IN THIS SPACE

Case No.
03-RC-289801

Date Filed
February 1, 2022

INSTRUCTIONS: Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.

Note: Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7.

1a. Full name of party filing Statement of Position		1c. Business Phone:	1e. Fax No.:
1b. Address (Street and number, city, state, and ZIP code)		1d. Cell No.:	1f. e-Mail Address
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)			
3. Do you agree that the proposed unit is appropriate? <input type="checkbox"/> Yes <input type="checkbox"/> No (If not, answer 3a and 3b)			
a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards)			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.			
Added		Excluded	
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.			
5. Is there a bar to conducting an election in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, state the basis for your position.			
6. Describe all other issues you intend to raise at the pre-election hearing.			
7. The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx . (a) A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) (b) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be <i>added</i> to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be <i>excluded</i> from the proposed unit to make it an appropriate unit. (Attachment D)			
8a. State your position with respect to the details of any election that may be conducted in this matter. Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
8b. Date(s)	8c. Time(s)	8d. Location(s)	
8e. Eligibility Period (e.g. special eligibility formula)	8f. Last Payroll Period Ending Date	8g. Length of payroll period <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)	
9. Representative who will accept service of all papers for purposes of the representation proceeding			
9a. Full name and title of authorized representative	9b. Signature of authorized representative		9c. Date
9d. Address (Street and number, city, state, and ZIP code)			9e. e-Mail Address
9f. Business Phone No.:		9g. Fax No.	9h. Cell No.

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME	CASE NUMBER 03-RC-289801
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1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)

3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION OR FORMATION	B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES
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4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).

7A. PRINCIPAL LOCATION:

7B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. TOTAL:

B. AT THE ADDRESS INVOLVED IN THIS MATTER:

9. DURING THE MOST RECENT (Check the appropriate box): ☐ CALENDAR ☐ 12 MONTHS or ☐ FISCAL YEAR (FY DATES _____)

	YES	NO
A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value. \$ _____		
B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$ _____		
C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$ _____		
D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$ _____		
E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____		
F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____		
G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$ _____		
H. Gross Revenues from all sales or performance of services (Check the largest amount) <input type="checkbox"/> \$100,000 <input type="checkbox"/> \$250,000 <input type="checkbox"/> \$500,000 <input type="checkbox"/> \$1,000,000 or more If less than \$100,000, indicate amount.		
I. Did you begin operations within the last 12 months? If yes, specify date: _____		

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

☐ YES ☐ NO (If yes, name and address of association or group).

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME	TITLE	E-MAIL ADDRESS	TEL. NUMBER
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12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)	SIGNATURE	E-MAIL ADDRESS	DATE
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PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A RESPONSIVE STATEMENT OF POSITION FORM

Completing and Filing this Form: For **RC and RD petitions**, the Petitioner is required to complete this form in response to each timely filed and served Statement of Position filed by another party. For **RM petitions**, the Employer-Petitioner must complete a Responsive Statement of Position form and submit the list described below. In accordance with Section 102.63(b) of the Board's Rules, if you are required to complete the form, you must have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition responding to the issues raised in another party's Statement of Position, such that it is received no later than noon three business days before the date of the hearing. A separate form must be completed for each timely filed and properly served Statement of Position you receive. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must E-File your Responsive Statement of Position at www.NLRB.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed. Note that if you are completing this form as a PDF downloaded from www.NLRB.gov, the form will lock upon signature and no further editing may be made.**

Required List: In addition to responding to the issues raised in another party's Statement of Position, if any, the Employer-Petitioner in an RM case is required to file and serve on the parties a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. This list must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the list in the required form, the list must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx

Consequences of Failure to Submit a Responsive Statement of Position: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
RESPONSIVE STATEMENT OF POSITION – RC, RD or RM PETITION

DO NOT WRITE IN THIS SPACE

Case No.
03-RC-289801

Date Filed
February 1, 2022

INSTRUCTIONS: If a party has submitted and served on you a timely Statement of Position to an RC, RD or RM petition, the Petitioner must submit this Responsive Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and any attachments on each party named in the petition in this case such that it is received by noon local time, three business days prior to the hearing date specified in the Notice of Hearing. A separate form must be completed for each timely filed and properly served Statement of Position received by the Petitioner. The Petitioner-Employer in a RM case is required to file this Responsive Statement of Position and include an appropriate employee list without regard to whether another party has filed a Statement of Position.

This Responsive Statement of Position is filed by the Petitioner in response to a Statement of Position received from the following party:

The Employer

An Intervenor/Union

1a. Full Name of Party Filing Responsive Statement of Position

1c. Business Phone

1d. Cell No.

1e. Fax No.

1f. E-Mail Address

1b. Address (Street and Number, City, State, and ZIP Code)

2. Identify all issues raised in the other party's Statement of Position that you dispute and describe the basis of your dispute:

a. EMPLOYER NAME/IDENTITY [Box 1a of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

b. JURISDICTION [Box 2 of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

c. APPROPRIATENESS OF UNIT [Boxes 3, 3a and 3b of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

d. INDIVIDUAL ELIGIBILITY [Box 4 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

e. BARS TO ELECTION [Box 5 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

f. ALL OTHER ISSUES [Box 6 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

g. ELECTION DETAILS [Boxes 8a, 8b, 8c, 8d, 8e, 8f, and 8g of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

Full Name and Title of Authorized Representative

Signature of Authorized Representative

Date

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

Please fill all necessary fields on the form PRIOR to digitally signing. To make changes after the form has been signed, right-click on the signature field and click "clear signature." Once complete, please sign the form.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 3
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

Agency Website: www.nlr.gov
Telephone: (716)551-4931
Fax: (716)551-4972



Download
NLRB
Mobile App

February 1, 2022

URGENT

Shelby Young, District Manager
Starbucks Corporation
1394 Mt. Hope
Rochester, NY 14620

Re: Starbucks Corporation
Case 03-RC-289801

Dear Ms. Young:

Enclosed is a copy of a petition that Workers United filed with the National Labor Relations Board (NLRB) seeking to represent certain of your employees. After a petition is filed, the employer is required to promptly take certain actions so please read this letter carefully to make sure you are aware of the employer's obligations. This letter tells you how to contact the Board agent who will be handling this matter, about the requirement to post and distribute the Notice of Petition for Election, the requirement to complete and serve a Statement of Position Form, the Petitioner's requirement to complete and serve a Responsive Statement of Position Form, a scheduled hearing in this matter, other information needed including a voter list, your right to be represented, and NLRB procedures, including how to submit documents to the NLRB.

Investigator: This petition will be investigated by Field Examiner THOMAS A. MILLER whose telephone number is (716)398-7004. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. If the agent is not available, you may contact Regional Director LINDA M. LESLIE whose telephone number is (716)398-7017. The Board agent may also contact you and the other party or parties to schedule a conference meeting or telephonic or video conference for some time before the close of business the day following receipt of the final Responsive Statement(s) of Position. This will give the parties sufficient time to determine if any issues can be resolved prior to hearing or if a hearing is necessary. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

Required Posting and Distribution of Notice: You must post the enclosed Notice of Petition for Election by February 8, 2022 in conspicuous places, including all places where notices to employees are customarily posted. The Notice of Petition for Election must be posted so all pages are simultaneously visible. If you customarily communicate electronically with employees in the petitioned-for unit, you must also distribute the notice electronically to them. You must maintain the posting until the petition is dismissed or withdrawn or this notice is replaced by the Notice of Election. Posting and distribution of the Notice of Petition for Election

will inform the employees whose representation is at issue and the employer of their rights and obligations under the National Labor Relations Act in the representation context. Failure to post or distribute the notice may be grounds for setting aside an election if proper and timely objections are filed.

Required Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, the employer is required to complete the enclosed Statement of Position form (including the attached Commerce Questionnaire), have it signed by an authorized representative, and file a completed copy (with all required attachments) with this office and serve it on all parties named in the petition such that it is received by them by **noon Eastern Time on February 11, 2022**. This form solicits information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. **This form must be e-Filed, but unlike other e-Filed documents, will *not* be timely if filed on the due date but after noon February 11, 2022.** If you have questions about this form or would like assistance in filling out this form, please contact the Board agent named above.

List(s) of Employees: The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx)

Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under Section 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing,

from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§ 102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Responsive Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, following timely filing and service of an employer's Statement of Position, the petitioner is required to complete the enclosed Responsive Statement of Position form, have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition responding to the issues raised in the employer's Statement of Position, such that it is received no later than **noon Eastern Time on February 16, 2022.**

Notice of Hearing: Enclosed is a Notice of Representation Hearing to be conducted at **10:00 a.m. on Tuesday, February 22, 2022 via a videoconference call**, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, the NLRB will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party showing good cause, the regional director may postpone the hearing. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Other Information Needed Now: Please submit to this office, as soon as possible, the following information needed to handle this matter:

- (a) A copy of any existing or recently expired collective-bargaining agreements, and any amendments or extensions, or any recognition agreements covering any of your employees in the unit involved in the petition (the petitioned-for unit);

- (b) The name and contact information for any other labor organization (union) claiming to represent any of the employees in the petitioned-for unit;
- (c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.
- (d) If you desire a formal check of the showing of interest, you must provide an alphabetized payroll list of employees in the petitioned-for unit, with their job classifications, for the payroll period immediately before the date of this petition. Such a payroll list should be submitted as early as possible prior to the hearing. Ordinarily a formal check of the showing of interest is not performed using the employee list submitted as part of the Statement of Position.

Voter List: If an election is held in this matter, the employer must transmit to this office and to the other parties to the election, an alphabetized list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular telephone numbers) of eligible voters. Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. I am advising you of this requirement now, so that you will have ample time to prepare this list. The list must be electronically filed with the Region and served electronically on the other parties. To guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlr.gov, or at the Regional office upon your request.

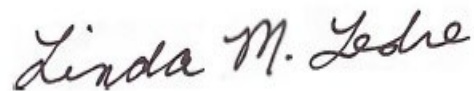
If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any “inside knowledge” or favored relationship with the NLRB. Their knowledge regarding this matter was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Procedures: Pursuant to Section 102.5 of the Board’s Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency’s web site (www.nlr.gov). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determinations solely based on the documents and evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native

format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the petition.

Information about the NLRB and our customer service standards is available on our website, www.nlr.gov, or from an NLRB office upon your request. We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in dark ink that reads "Linda M. Leslie". The signature is written in a cursive, flowing style.

LINDA M. LESLIE
Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)
6. Responsive Statement of Position (Form 506)

cc: Kevin Johnson, President and CEO
Starbucks Corporation
2401 Utah Avenue South
Suite 80
Seattle, WA 98134

Alan I. Model, Attorney at Law
Littler Mendelson, PC
One Newark Center
8th Floor
Newark, NJ 07102-5235



National Labor Relations Board



NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that Workers United has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 03-RC-289801 seeking an election to become certified as the representative of the employees of Starbucks Corporation in the unit set forth below:

All full-time and regular part-time Baristas, Shift Supervisors, Asst. Store Managers. Excluded: Store Managers; office clericals, guards, and supervisors as defined by the Act.

This notice also provides you with information about your basic rights under the National Labor Relations Act, the processing of the petition, and rules to keep NLRB elections fair and honest.

YOU HAVE THE RIGHT under Federal Law

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of your own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustments).

PROCESSING THIS PETITION

Elections do not necessarily occur in all cases after a petition is filed. **NO FINAL DECISIONS HAVE BEEN MADE YET** regarding the appropriateness of the proposed unit or whether an election will be held in this matter. If appropriate, the NLRB will first see if the parties will enter into an election agreement that specifies the method, date, time, and location of an election and the unit of employees eligible to vote. If the parties do not enter into an election agreement, usually a hearing is held to receive evidence on the appropriateness of the unit and other issues in dispute. After a hearing, an election may be directed by the NLRB, if appropriate.

IF AN ELECTION IS HELD, it will be conducted by the NLRB by secret ballot and Notices of Election will be posted before the election giving complete details for voting.

ELECTION RULES

The NLRB applies rules that are intended to keep its elections fair and honest and that result in a free choice. If agents of any party act in such a way as to interfere with your right to a free election, the election can be set aside by the NLRB. Where appropriate the NLRB provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with employees' rights and may result in setting aside the election:

- Threatening loss of jobs or benefits by an employer or a union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or, if the election is conducted by mail, from the time and date the ballots are scheduled to be sent out by the Region until the time and date set for their return
- Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a union or an employer to influence their votes

Please be assured that IF AN ELECTION IS HELD, every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with the NLRB in maintaining basic principles of a fair election as required by law. The NLRB as an agency of the United States Government does not endorse any choice in the election.

For additional information about the processing of petitions, go to www.nlr.gov or contact the NLRB at (716)551-4931.

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED BY ANYONE. IT MUST REMAIN POSTED WITH ALL PAGES SIMULTANEOUSLY VISIBLE UNTIL REPLACED BY THE NOTICE OF ELECTION OR THE PETITION IS DISMISSED OR WITHDRAWN.



National Labor Relations Board





**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3**



Starbucks Corporation Employer and Workers United Petitioner	Case 03-RC-289801
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NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 10:00 a.m. on **Tuesday, February 22, 2022** and on consecutive days thereafter until concluded, at the National Labor Relations Board offices located via a videoconference call, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Starbucks Corporation must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **noon** Eastern time on February 11, 2022. Following timely filing and service of a Statement of Position by Starbucks Corporation, the Petitioner must complete its Responsive Statement of Position(s) responding to the issues raised in the Employer's and/or Union's Statement of Position and file them and all attachments with the Regional Director and serve them on the parties named in the petition such they are received by them no later than **noon** Eastern on February 16, 2022.

Pursuant to Section 102.5 of the Board's Rules and Regulations, all documents filed in cases before the Agency must be filed by electronically submitting (E-Filing) through the Agency's website (www.nlrb.gov), unless the party filing the document does not have access to the means for filing electronically or filing electronically would impose an undue burden. Documents filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#)

The Statement of Position and Responsive Statement of Position must be E-Filed but, unlike other E-Filed documents, must be filed by **noon** Eastern on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position and Responsive Statement of Position are not required to be filed. If an election agreement is signed by all parties and returned to the Regional office after the due date of the Statement of Position but before the due date of the Responsive Statement of Position, the Responsive Statement of Position is not required to be filed.

Dated: February 1, 2022

/s/Linda M. Leslie

LINDA M. LESLIE
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 03
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

Starbucks Corporation Employer and Workers United Petitioner	Case 03-RC-289801
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AFFIDAVIT OF SERVICE OF: Petition dated February 1, 2022, Notice of Representation Hearing dated February 1, 2022, Description of Procedures in Certification and Decertification Cases (Form NLRB-4812), Notice of Petition for Election, and Statement of Position Form (Form NLRB-505).

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on February 1, 2022, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

Alan I. Model, Attorney at Law
Littler Mendelson, PC
One Newark Center
8th Floor
Newark, NJ 07102-5235
amodel@littler.com
Fax: (973)755-0439

Kevin Johnson, President and CEO
Starbucks Corporation
2401 Utah Avenue South
Suite 80
Seattle, WA 98134
kevin.johnson@starbucks.com

Shelby Young, District Manager
Starbucks Corporation
1394 Mt. Hope
Rochester, NY 14620
shyoung@starbucks.com

Ian Hayes, Attorney at Law
Hayes Dolce
471 Voorhees Avenue
Buffalo, NY 14216
ihayes@hayesdolce.com

Workers United
2954 Main Street, Suite 556
Buffalo, NY 14214

February 1, 2022

Date

Andrea Seyfried, Designated Agent of NLRB

Name

/s/ Andrea Seyfried

Signature

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

**DESCRIPTION OF REPRESENTATION CASE PROCEDURES
IN CERTIFICATION AND DECERTIFICATION CASES**

The National Labor Relations Act grants employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity. A party may file an RC, RD or RM petition with the National Labor Relations Board (NLRB) to conduct a secret ballot election to determine whether a representative will represent, or continue to represent, a unit of employees. An **RC** petition is generally filed by a union that desires to be certified as the bargaining representative. An **RD** petition is filed by employees who seek to remove the currently recognized union as the bargaining representative. An **RM** petition is filed by an employer who seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status. This form generally describes representation case procedures in RC, RD and RM cases, also referred to as certification and decertification cases.

Right to be Represented – Any party to a case with the NLRB has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at www.nlr.gov or forward it to the NLRB Regional Office handling the petition as soon as possible.

Filing and Service of Petition – A party filing an RC, RD or RM petition is required to serve a copy of its petition on the parties named in the petition along with this form and the Statement of Position form. The petitioner files the petition with the NLRB, together with (1) a certificate showing service of these documents on the other parties named in the petition, and (2) a showing of interest to support the petition. The showing of interest is not served on the other parties.

Notice of Hearing – After a petition in a certification or decertification case is filed with the NLRB, the NLRB reviews the petition, certificate of service, and the required showing of interest for sufficiency, assigns the petition a case number, and promptly sends letters to the parties notifying them of the Board agent who will be handling the case. In most cases, the letters include a Notice of Representation Hearing. Except in cases presenting unusually complex issues, this pre-election hearing is set for a date 14 business days (excluding weekends and federal holidays) from the date of service of the notice of hearing. Once the hearing begins, it will continue day to day until completed absent extraordinary circumstances. The Notice of Representation Hearing also sets the due date for filing and serving the Statement(s) of Position and the Responsive Statement of Position(s). Included with the Notice of Representation Hearing are the following: (1) copy of the petition, (2) this form, (3) Statement of Position for non-petitioning parties, (4) petitioner's Responsive Statement of Position, (5) Notice of Petition for Election, and (6) letter advising how to contact the Board agent who will be handling the case and discussing those documents.

Hearing Postponement: Requests to postpone the hearing are not routinely granted, but the regional director may postpone the hearing for good cause. A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should include the positions of the other parties regarding the postponement. The request must be filed electronically ("E-Filed") on the Agency's website (www.nlr.gov) by following the instructions on the website. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Statement of Position Form and List(s) of Employees – The Statement of Position form solicits commerce and other information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. In an **RC** or **RD** case, as part of its Statement of Position form, the employer also provides a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional

form for the list is provided on the NLRB website at www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx

Ordinarily the Statement of Position must be filed with the Regional Office and served on the other parties such that it is received by them by noon 8 business days from the issuance of the Notice of Hearing. The regional director may postpone the due date for filing and serving the Statement of Position for good cause. The Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Responsive Statement of Position – Petitioner's Responsive Statement(s) of Position solicits a response to the Statement(s) of Position filed by the other parties and further facilitates entry into election agreements or streamlines the preelection hearing. A petitioner must file a Responsive Statement of Position in response to each party's Statement of Position addressing each issue in each Statement of Position(s), if desired. In the case of an RM petition, the employer-petitioner must also provide commerce information and file and serve a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. Ordinarily, the Responsive Statement of Position must be electronically filed with the Regional Office and served on the other parties such that it is received by noon 3 business days prior to the hearing. The regional director may postpone the due date for filing and serving the Responsive Statement of Position for good cause. The Responsive Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Responsive Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Responsive Statement of Position due date. If a party wishes to request both a postponement of the hearing and a Postponement of the Responsive Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Posting and Distribution of Notice of Petition for Election – Within 5 business days after service of the notice of hearing, the employer must post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and must also distribute it electronically to the employees in the petitioned-for unit if the employer customarily communicates with these employees electronically. The employer must maintain the posting until the petition is dismissed or withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election if proper and timely objections are filed.

Election Agreements – Elections can occur either by agreement of the parties or by direction of the regional director or the Board. Three types of agreements are available: (1) a Consent Election Agreement (Form NLRB-651); (2) a Stipulated Election Agreement (Form NLRB-652); and (3) a Full Consent Agreement (Form NLRB-5509). In the Consent Election Agreement and the Stipulated Election Agreement, the parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent. In the Consent Agreement, the parties also agree that post-election matters (election objections or determinative challenged ballots) will be resolved with finality by the regional director; whereas in the Stipulated Election Agreement, the parties agree that they may request Board review of the regional director's post-election determinations. A Full Consent Agreement provides that the regional director will make final determinations regarding all pre-election and post-election issues.

Hearing Cancellation Based on Agreement of the Parties – The issuance of the Notice of Representation Hearing does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments and the Board agent assigned to the case will work with the parties to enter into an election agreement, so the parties can avoid the time and expense of participating in a hearing.

Hearing – A hearing will be held unless the parties enter into an election agreement approved by the regional director or the petition is dismissed or withdrawn.

Purpose of Hearing: The primary purpose of a pre-election hearing is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit

appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which a labor organization has been certified or is being currently recognized by the employer as the bargaining representative.

Issues at Hearing: Issues that might be litigated at the pre-election hearing include: jurisdiction; labor organization status; bars to elections; unit appropriateness; expanding and contracting unit issues; inclusion of professional employees with nonprofessional employees; seasonal operation; potential mixed guard/non-guard unit; and eligibility formulas. At the hearing, the timely filed Statement of Position and Responsive Statement of Position(s) will be received into evidence. The hearing officer will not receive evidence concerning any issue as to which the parties have not taken adverse positions, except for evidence regarding the Board's jurisdiction over the employer and evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

Preclusion: At the hearing, a party will be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or Responsive Statement of Position(s) or to place in dispute in timely response to another party's Statement of Position or response, except that no party will be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. As set forth in §102.66(d) of the Board's rules, if the employer fails to timely furnish the lists of employees, the employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Conduct of Hearing: If held, the hearing is usually open to the public and will be conducted by a hearing officer of the NLRB. Any party has the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer also has the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses will be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Parties appearing at any hearing who have or whose witnesses have disabilities falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the regional director as soon as possible and request the necessary assistance.

Official Record: An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (Copies of exhibits should be supplied to the hearing officer and other parties at the time the exhibit is offered in evidence.) All statements made at the hearing will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the regional director.

Motions and Objections: All motions must be in writing unless stated orally on the record at the hearing and must briefly state the relief sought and the grounds for the motion. A copy of any motion must be served immediately on the other parties to the proceeding. Motions made during the hearing are filed with the hearing officer. All other motions are filed with the regional director, except that motions made after the transfer of the record to the Board are filed with the Board. If not E-Filed, an original and two copies of written motions shall be filed. Statements of reasons in support of motions or objections should be as concise as possible. Objections shall not be deemed waived by further participation in the hearing. On appropriate request, objections may be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

Election Details: Prior to the close of the hearing the hearing officer will: (1) solicit the parties' positions (but will not permit litigation) on the type, date(s), time(s), and location(s) of the election and the eligibility period; (2) solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election if an election is directed; (3) inform the parties that the regional director will issue a decision as soon as practicable and will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and (4) inform the parties of their obligations if the director directs an election and of the time for complying with those obligations.

Oral Argument and Briefs: Upon request, any party is entitled to a reasonable period at the close of the hearing for oral argument, which will be included in the official transcript of the hearing. At any time before the close of the hearing, any party may file a memorandum addressing relevant issues or points of law. Post-hearing briefs shall be due within 5 business days of the close of the hearing. The hearing officer may allow up to 10 additional business days for such briefs prior to the close of hearing and for good cause. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the regional director. Briefs including electronic documents, filed with the Regional Director must be formatted as double-spaced in an 8½ by 11 inch format and must be e-filed through the Board's website, www.nlr.gov.

Regional Director Decision - After the hearing, the regional director issues a decision directing an election, dismissing the petition or reopening the hearing. A request for review of the regional director's pre-election decision may be filed with the Board at any time after issuance of the decision until 10 business days after a final disposition of the proceeding by the regional director. Accordingly, a party need not file a request for review before the election in order to preserve its right to contest that decision after the election. Instead, a party can wait to see whether the election results have mooted the basis of an appeal. The Board will grant a request for review only where compelling reasons exist therefor.

Voter List – The employer must provide to the regional director and the parties named in the election agreement or direction of election a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular ("cell") telephone numbers) of all eligible voters. (In construction industry elections, unless the parties stipulate to the contrary, also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.) The employer must also include in a separate section of the voter list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge. The list of names must be alphabetized (overall or by department) and be in the same Microsoft Word file (or Microsoft Word compatible file) format as the initial lists provided with the Statement of Position form unless the parties agree to a different format or the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list must be filed electronically with the regional director and served electronically on the other parties named in the agreement or direction. To be timely filed and served, the voter list must be received by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction of elections unless a longer time is specified in the agreement or direction. A certificate of service on all parties must be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

Waiver of Time to Use Voter List – Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 calendar days after the date when the employer must file the voter list with the Regional Office. However, the parties entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.

Election – Information about the election, requirements to post and distribute the Notice of Election, and possible proceedings after the election is available from the Regional Office and will be provided to the parties when the Notice of Election is sent to the parties.

Withdrawal or Dismissal – If it is determined that the NLRB does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the regional director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A STATEMENT OF POSITION FORM

Completing and Filing this Form: The Notice of Hearing indicates which parties are responsible for completing the form. If you are required to complete the form, you must have it signed by an authorized representative and file a completed copy (including all attachments) with the RD and serve copies on all parties named in the petition by the date and time established for its submission. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must EFile your Statement of Position at www.nlr.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed.**

Note: Non-employer parties who complete this Statement of Position are NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7.

Required Lists: The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx).

Consequences of Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
STATEMENT OF POSITION

DO NOT WRITE IN THIS SPACE

Case No.

03-RC-289801

Date Filed

February 1, 2022

INSTRUCTIONS: Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.

Note: Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7.

1a. Full name of party filing Statement of Position		1c. Business Phone:	1e. Fax No.:
1b. Address (Street and number, city, state, and ZIP code)		1d. Cell No.:	1f. e-Mail Address
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)			
3. Do you agree that the proposed unit is appropriate? <input type="checkbox"/> Yes <input type="checkbox"/> No (If not, answer 3a and 3b)			
a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards)			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.			
Added		Excluded	
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.			
5. Is there a bar to conducting an election in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, state the basis for your position.			
6. Describe all other issues you intend to raise at the pre-election hearing.			
7. The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx . (a) A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) (b) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be <i>added</i> to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be <i>excluded</i> from the proposed unit to make it an appropriate unit. (Attachment D)			
8a. State your position with respect to the details of any election that may be conducted in this matter. Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
8b. Date(s)	8c. Time(s)	8d. Location(s)	
8e. Eligibility Period (e.g. special eligibility formula)	8f. Last Payroll Period Ending Date	8g. Length of payroll period <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)	
9. Representative who will accept service of all papers for purposes of the representation proceeding			
9a. Full name and title of authorized representative	9b. Signature of authorized representative		9c. Date
9d. Address (Street and number, city, state, and ZIP code)			9e. e-Mail Address
9f. Business Phone No.:		9g. Fax No.	9h. Cell No.

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME	CASE NUMBER 03-RC-289801
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1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)

3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION OR FORMATION	B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES
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4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).

7A. PRINCIPAL LOCATION:

7B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. TOTAL:

B. AT THE ADDRESS INVOLVED IN THIS MATTER:

9. DURING THE MOST RECENT (Check the appropriate box): ☐ CALENDAR ☐ 12 MONTHS or ☐ FISCAL YEAR (FY DATES _____)

	YES	NO
A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value. \$ _____		
B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$ _____		
C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$ _____		
D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$ _____		
E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____		
F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____		
G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$ _____		
H. Gross Revenues from all sales or performance of services (Check the largest amount) <input type="checkbox"/> \$100,000 <input type="checkbox"/> \$250,000 <input type="checkbox"/> \$500,000 <input type="checkbox"/> \$1,000,000 or more If less than \$100,000, indicate amount.		
I. Did you begin operations within the last 12 months? If yes, specify date: _____		

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

☐ YES ☐ NO (If yes, name and address of association or group).

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME	TITLE	E-MAIL ADDRESS	TEL. NUMBER
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12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)	SIGNATURE	E-MAIL ADDRESS	DATE
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PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A RESPONSIVE STATEMENT OF POSITION FORM

Completing and Filing this Form: For **RC and RD petitions**, the Petitioner is required to complete this form in response to each timely filed and served Statement of Position filed by another party. For **RM petitions**, the Employer-Petitioner must complete a Responsive Statement of Position form and submit the list described below. In accordance with Section 102.63(b) of the Board's Rules, if you are required to complete the form, you must have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition responding to the issues raised in another party's Statement of Position, such that it is received no later than noon three business days before the date of the hearing. A separate form must be completed for each timely filed and properly served Statement of Position you receive. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must E-File your Responsive Statement of Position at www.NLRB.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed. Note that if you are completing this form as a PDF downloaded from www.NLRB.gov, the form will lock upon signature and no further editing may be made.**

Required List: In addition to responding to the issues raised in another party's Statement of Position, if any, the Employer-Petitioner in an RM case is required to file and serve on the parties a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. This list must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the list in the required form, the list must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx)

Consequences of Failure to Submit a Responsive Statement of Position: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
RESPONSIVE STATEMENT OF POSITION – RC, RD or RM PETITION

DO NOT WRITE IN THIS SPACE

Case No.
03-RC-289801

Date Filed
February 1, 2022

INSTRUCTIONS: If a party has submitted and served on you a timely Statement of Position to an RC, RD or RM petition, the Petitioner must submit this Responsive Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and any attachments on each party named in the petition in this case such that it is received by noon local time, three business days prior to the hearing date specified in the Notice of Hearing. A separate form must be completed for each timely filed and properly served Statement of Position received by the Petitioner. The Petitioner-Employer in a RM case is required to file this Responsive Statement of Position and include an appropriate employee list without regard to whether another party has filed a Statement of Position.

This Responsive Statement of Position is filed by the Petitioner in response to a Statement of Position received from the following party:

The Employer

An Intervenor/Union

1a. Full Name of Party Filing Responsive Statement of Position

1c. Business Phone

1d. Cell No.

1e. Fax No.

1f. E-Mail Address

1b. Address (Street and Number, City, State, and ZIP Code)

2. Identify all issues raised in the other party's Statement of Position that you dispute and describe the basis of your dispute:

a. EMPLOYER NAME/IDENTITY [Box 1a of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

b. JURISDICTION [Box 2 of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

c. APPROPRIATENESS OF UNIT [Boxes 3, 3a and 3b of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

d. INDIVIDUAL ELIGIBILITY [Box 4 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

e. BARS TO ELECTION [Box 5 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

f. ALL OTHER ISSUES [Box 6 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

g. ELECTION DETAILS [Boxes 8a, 8b, 8c, 8d, 8e, 8f, and 8g of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

Full Name and Title of Authorized Representative

Signature of Authorized Representative

Date

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

Please fill all necessary fields on the form PRIOR to digitally signing. To make changes after the form has been signed, right-click on the signature field and click "clear signature." Once complete, please sign the form.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 3

WORKERS UNITED,

Petitioner

**MOTION TO BAR RECEIPT OF
EVIDENCE PURSUANT TO
29 C.F.R. § 102.66(c)**

-and-

STARBUCKS CORPORATION,

Employer.

**03-RC-289785
03-RC-289793
03-RC-289796
03-RC-289801
03-RC-289802
03-RC-289805**

The Regional Director should order Starbucks to submit an offer of proof to support its expected assertion that a single-store unit is inappropriate and to bar the Hearing Officer's receipt of any further evidence unless the offer of proof is sufficient to sustain Starbucks' position that it can overcome the single-store presumption. In response to dozens of petitions across the country, including six previous petitions here in the Buffalo area, the Company has asked for the same "market-wide" unit¹ instead of allowing Starbucks workers to vote according to the petitioned-for single-store units. Starbucks has now litigated the issue to completion three times, with other cases pending, and each time the Company has presented nearly the same evidence. Each time, the regional director found that it had failed to sustain its burden to rebut the single-store presumption.

¹ While the Company has requested a district-wide unit in other cases, the essential dispute between the parties has been identical since the Union filed the first petitions in Buffalo.

The Company should be barred from presenting the same kinds of evidence to litigate the same issue at additional stores.

It is clear by now that Starbucks is not raising this issue out of any legitimate question about the appropriateness of a single-store unit, or any genuine hope to overcome the single-store presumption. Rather, Starbucks has sought to litigate this issue in order to delay elections, giving the Company more time to invade petitioning stores, intimidate employees, and interfere with its employees' Section 7 rights. This cannot be what the Act is for, and this abuse of Board processes must stop. The RD has the power to prevent this abuse and streamline the election process to uphold Starbucks employees' right to freely select a bargaining representative. Pursuant to Board Rules and Regulations § 102.66(c), the RD should order Starbucks to make an offer of proof if it wishes to challenge the single-store units at issue. If that offer of proof does not demonstrate that the Company has new evidence to overcome the single-store presumption, then Starbucks should be precluded from offering evidence on that issue.

I. The RD Has the Authority to Evaluate Proffered Evidence to Determine the Issues to be Litigated at a Pre-Election Hearing.

Board regulations state that the RD must determine the issues to be litigated at the hearing, and may require an offer of proof from either side to determine whether an issue should be litigated.

29 C.F.R. § 102.66(c) reads in relevant part:

The Regional Director shall direct the Hearing Officer concerning the issues to be litigated at the hearing. The Hearing Officer may solicit offers of proof from the parties or their counsel as to any or all such issues. Offers of proof shall take the form of a written statement or an oral statement on the record identifying each witness the party would call to testify concerning the issue and summarizing each witness's testimony. If the Regional Director determines that the evidence described in an offer of proof is insufficient to sustain the proponent's position, the evidence shall not be received.

The regulations and Board procedures provide sole discretion to the RD to determine whether the evidence offered is enough to “sustain the proponent’s position” in a hearing. If not, the RD must exclude the evidence: “the evidence shall not be received.” *See also* Casehandling Manual, Part Two, Representation Proceedings, § 11226 (September 2020), (providing for the use of offers of proof “to focus and define issues and provide a foundation to accept or exclude evidence”).

Both *Jersey Shore Nursing and Rehabilitation Center*, 325 NLRB 603 (1998) and *NLRB v. Tito Contractors*, 847 F.3d 724 (D.C. Cir. 2017) approved the use of offers of proof where employers claimed the impropriety of presumptively appropriate units. In *Jersey Shore*, after contesting the propriety of a healthcare service and maintenance unit, “the Employer, was provided with the opportunity to make an offer of proof in support of its unit contentions” The hearing officer, with eventual Board approval, deemed the proffer inadequate “and precluded the Employer from presenting testimony on the unit issue[.]” In *Tito Contractors*, the court approved of the agency’s use of an offer of proof where the employer challenged a presumptively appropriate employer-wide unit. Although the court ultimately rejected the Board’s holding that the employer-wide unit was appropriate, 847 F.3d at 732-734, it found that *Jersey Shore* “is direct precedent supporting the use of an offer of proof in lieu of oral testimony if the petitioned-for unit is presumptively appropriate.” 847 F.3d at 730.

II. The RD Should Exercise Her Authority Because Region 3, Region 28, and the Board Have All Evaluated Starbucks Proffered Evidence and Determined It Is Insufficient to Rebut the Single-Store Presumption.

On the merits of the dispute that the Company wishes to litigate, the burden is on the Employer to establish that a single-store unit is not appropriate, and the burden is a “heavy one.” *California Pacific Medical Center*, 357 NLRB 197, 200 (2011); *see also* *Dixie Belle Mills, Inc.*,

139 NLRB 629, 631 (1962); *Frisch's Big Boy Ill-Mar, Inc.*, 147 NLRB 551 (1964); *Haag Drug Co.*, 169 NLRB 877 (1968); *Walgreen Co.*, 198 NLRB 1138 (1972); *Lipman's, A Div. of Dayton-Hudson Corp.*, 227 NLRB 1436 (1977); *Bud's Thrift-T-Wise*, 236 NLRB 1203 (1978); *Renzetti's Mkt., Inc.*, 238 NLRB 174 (1978); *Eschenbach-Boysa Co.*, 268 NLRB 550 (1984); *Red Lobster*, 300 NLRB 908 (1990); *Hilander Foods*, 348 NLRB 1200 (2006). The Employer is not entitled to litigate this issue unless it can make an offer of proof to show that it has evidence to overcome this burden.

Moreover, this is not a case where the RD must rely on the single-store presumption alone to preclude litigation over the issue in a pre-election hearing. Rather, two separate regions and the Board have all evaluated the evidence and determined that Starbucks cannot overcome the single-store presumption.² After weeks of testimony, thousands of pages of exhibits, and countless BoRD resources, Starbucks has failed to rebut the single-store presumption.

Here, the ARD of Region 3 has already resolved the same question *twice*, with Board approval in one instance, based on functionally identical evidence regarding all six petitions. Decision and Direction of Elections, Cases 03-RC-282115, 03-RC-282127, 03-RC-282139 (October 28, 2021) ("*Buffalo I*"), review denied, 2021 WL 5848184 (Dec. 7, 2021) ("*Board, Buffalo I*"); Decision and Direction of Elections, Cases 03-RC-285929, 03-RC-285986, and 03-RC-285989 (January 14, 2022) ("*Buffalo II*"). Region 28's Director also resolved the question with near identical analysis. Decision and Direction of Election, Case 28-RC-286556 (January 7, 2022) ("*Arizona*"). Because the Company has presented very similar evidence to support its position, both of the Region 3 decisions as well as the Region 28 decision read very similarly and

² By the time of the hearing and/or a Decision and Direction of Elections in the instant matter, there will doubtless be other decisions from Regional Directors around the country, also finding Starbucks had failed to rebut the single-store presumption, and for the same reasons as in the original Buffalo cases and the Mesa, AZ case.

have relied on similar facts from the record to uphold the single-store presumption. To cement the conclusion that Starbucks stores may organize individually, the Board published a lengthy footnote in its denial of Starbucks' Request for Review in which it upheld the reasoning relied upon in all 3 decisions. *Board, Buffalo I*, *1.

Starbucks fully presented its evidence that it said supported multi-location units in each case. As the ARD wrote, "Starbucks relies heavily on its centralized operating procedures, including distribution channels, store design, and product offerings, placement, marketing, and promotions, as evidence of functional integration." *Buffalo I*, at 16. The decisions uniformly discounted that evidence: "the stores' standardization is outweighed by other evidence of local autonomy in operations and labor relations." *Buffalo I*, at 16. For example, all three DDEs and the Board's decision highlight similar facts about local store autonomy and control of labor relations:

The evidence in this case demonstrates that store managers exercise discretion over many daily operational and labor relations matters. They make schedules, secure coverage outside of employees' stated availabilities, and make work assignments based on their independent judgment of employees' preferences and strengths. They interview job applicants and effectively recommend them for hire, conduct orientations and trainings, and issue or effectively recommend discipline and termination. They observe employees' performance, evaluate them, play a central role in promotions, and mediate daily grievances. While employee disciplines are occasionally overturned on appeal, store managers' decisions generally prevail without external input. The record contains no examples of district managers conducting independent investigations of disciplines, evaluations, or grievances, nor that they participate in interviews. District managers are simply not present in any individual store with enough frequency to serve as supervisory eyes and ears.

Buffalo I, at 17.

The evidence adduced at hearing demonstrates that store managers exercise discretion over many daily operational and labor relations matters. Store managers prepare work schedules, secure coverage outside of employees' stated availabilities, and make work assignments based on their independent judgment of employees' preferences and strengths. They interview job applicants and effectively recommend individuals for hire, conduct orientations and trainings, and

issue or effectively recommend discipline and termination. They observe employee performance, evaluate them, play a central role in promotions, and mediate daily grievances. Store managers issue discipline and effectively recommend disciplinary actions. Though district managers and the Employer's human resources team may be involved in disciplinary action and employee terminations, the record contains no examples of district managers conducting independent investigations of disciplines, evaluations, or grievances. Regarding the hiring of employees, while district managers may facilitate hiring fairs, there is no direct evidence of district managers participating in applicant interviews. Moreover, district managers are simply not present in any individual store with enough frequency to serve as supervisory eyes and ears.

Arizona, at 13-14.

The evidence in this case demonstrates that store managers exercise discretion over many daily operational and labor relations matters. They make schedules, secure coverage outside of employees' stated availabilities when drafting schedules, and make work assignments based on their independent judgment of employees' preferences, strengths, and skills. They observe employees' performance, evaluate them, play a central role in promotions, and mediate daily grievances and routine problems. While employee disciplines are occasionally overturned on appeal, store managers' decisions generally prevail without external input. The record reflects that district managers do not routinely conduct independent investigations of disciplines, evaluations, or grievances. Even relying on the new district managers' increased presence since the organizing campaign began, they simply cannot be present in any individual store with enough frequency to serve as supervisory eyes and ears.

The record reflects that, since the prior decision, Starbucks has centralized hiring, training, and orientation functions previously under the purview of store managers. Witnesses consistently testified that, prior to the campaign, store managers were responsible for each of these functions. Store managers interviewed job applicants and effectively recommended them for hire, conducted orientations, and oversaw new employees' trainings. Even relying on recent changes which eliminated store managers' role in these areas, the conclusion remains that each store operates with sufficient local autonomy to support its own unit. Store managers handle daily matters ranging from adjusting schedules, approving time-off, assigning work, rating employee performance, identifying the need for discipline, recommending terminations, and handling employees' grievances and routine problems. Under these circumstances, "the actual day-to-day supervision" is not "conducted by central office officials" such that a single-facility unit is inappropriate. *Haag Drug*, 169 NLRB at 879.

Buffalo II, at 22-23.

Although the Employer generally contends that its automated tools and company-wide policies limit store managers' discretion over such daily matters, its conclusory and generalized testimony fails to rebut the Petitioner's evidence that store managers play a significant role in adjusting schedules, approving time off and overtime, evaluating employees, conducting interviews and hiring employees, and imposing discipline.

Board, Buffalo I, at *1.

Every decision noted that the Company's proffered evidence of generalized testimony from upper-level management could not dispute the significant autonomy and control of labor relations exercised by store managers within Starbucks stores. *Buffalo I*, at 5 ("Starbucks contends that employees simply are not aware of upper-level management's involvement in approving time-off and overtime requests but offered no concrete examples or evidence of that involvement"); *Board, Buffalo I*, at *1 ("Although the Employer generally contends that its automated tools and company-wide policies limit store managers' discretion over such daily matters, its conclusory and generalized testimony fails to rebut the Petitioner's evidence that store managers play a significant role in adjusting schedules, approving time off and overtime, evaluating employees, conducting interviews and hiring employees, and imposing discipline"); *Arizona*, at 14 ("The Employer generally contends that its automated tools and company-wide policies limit store managers' discretion over in-store daily matters. However, the conclusory and generalized testimony provided by the Employer's witnesses fails to rebut the record evidence that store managers play a significant role in adjusting schedules, approving time off and overtime, evaluating employees, conducting interviews and hiring employees, and imposing discipline"); *Buffalo II*, at 13 ("in contrast to Starbucks' representation that technology solutions and district management dictate such matters as scheduling, assignment of work, promotions, performance evaluations, discipline, terminations, and resolution of grievances, the record establishes a different dynamic"). This was

true even after the Company made impermissible operational changes in response to the union campaign. *See Buffalo II*, at 14.

Similarly, both Region 3 DDEs maintain that the level of employee interchange is not significant enough to rebut the single-store presumption. *Buffalo I*, at 19-22; *Buffalo II*, at 25-27. In particular, in both decisions the RD noted how the overall level of interchange did not undermine homogeneity in the units because at least 93% of all hours worked at each of the six petitioned stores were worked by the same employees. *Buffalo I*, at 21 (“They were always staffed by at least 93 percent of home-store employees”); *Buffalo II*, at 26 (“They were staffed at least 95 percent of the time by home-store employees”). Regional Director Overstreet made a similar finding in Region 28. *Arizona*, at 16-17 (“the percent of hours worked by borrowed employees amounted to 1.8% of total hours worked. Such minimal numbers are not sufficient to demonstrate that a single-facility’s homogeneity of employees has been destroyed or to rebut the single-facility presumption.”). This finding, and its reasoning, were later affirmed by the Board, *Board, Buffalo I*, at *1 (“although the Employer has demonstrated that a significant percentage of employees work ‘at least one shift’ at another store ‘per year,’ this is not evidence of regular interchange sufficient to rebut the single-facility presumption”). Yet, Starbucks intends to present the same evidence again before the RD—as it has in ten or more cases in which hearings have already been conducted, and as it will in all the cases that have been filed and are awaiting hearing. *See Exhibit A*.

Starbucks is not entitled to present the same evidence endlessly. In *Bennett Industries, Inc.*, 313 NLRB 1363 (1994), the Board clearly articulated that it must balance the due process rights of the parties to present evidence and advance arguments with its “affirmative duty to protect the integrity of the Board’s processes against unwarranted burdening of the record and unnecessary delay.” In other words, the Company’s inevitable response that it “has a right to put on its case”

is not absolute, and must be tempered by a reasonable assessment of the entire context. Most importantly, it must be balanced against the rights of Starbucks workers to vote in elections according to the terms they have requested in filing petitions.

Here, Starbucks has had three chances, in two separate regions, to litigate the appropriate unit issue, with further review from the Board. Not a single decisionmaker has found for the Company, and each one has directly undermined Starbucks' attempts to sidestep the primary issues with its elaborate evidence. Furthermore, they will continue to fail to meet their burden in every subsequent hearing, until the endless processing of identical hearings is put to an end. The region has more than adequately respected the Company's due process rights by allowing it to litigate the appropriate unit issue twice. Requiring an offer of proof in order to litigate the appropriate unit issue in future RC cases maintains the Company's right to present evidence and advance arguments, while at the same time upholding the RD's affirmative duty to protect the integrity of the agency's processes against unwarranted burdening of the record and unnecessary delay.

III. The NLRB Must Protect the Integrity of Its Processes from Future Abuse

The exact types of abuse the Board is concerned with are central to Starbucks' strategy here: unwarranted burdening of the record and unnecessary delay. Starbucks is a multi-billion-dollar company with virtually unlimited resources, and it has demonstrated it will push the boundaries of the law at any cost in order to prevent its employees from unionizing. Challenging the appropriateness of single-store units is one way in which the Company can significantly delay elections and give itself more time to coerce, surveil, and intimidate its employees. The Board must protect itself and its own administrative processes from abuse in this case in order to protect itself from future abuse.

While the Company and the Union have litigated the appropriate unit issue over the past half a year, Starbucks has had the opportunity to wreak havoc on the workers where they have filed petitions. Such conduct includes invading stores with “support managers” to surveil and intimidate workers; upwards of four support managers have been added to individual Starbucks stores, a 400% increase in local store management in the blink of an eye.³ Starbucks announced a billion-dollar national wage increase for all hourly partners, including seniority pay provisions, which will increase the pay of some workers by over 20%. Rather conspicuously, the Company announced the billion-dollar raise on October 27, 2021, immediately before the region was expected to issue the first Buffalo DDE authorizing individual stores to vote. As the campaign has progressed, Starbucks’ actions have become increasingly threatening and retaliatory, as union supporters are forced out of stores for violating frivolous and never-before-enforced company policies.

Starbucks has conducted this campaign because it can—it is a multi-billion-dollar company with little respect for its employees, the Board, or our country’s labor law. The Board must prevent Starbucks from continuing this charade and facilitate a quicker turnaround from filing to vote to certification. If not, nothing will prevent future employers with infinite resources from perverting the Board’s administrative processes and undermining workers’ right to freely choose their collective bargaining representative.

IV. Conclusion

The law requires the region to have a pre-election hearing in disputed RC cases. 29 U.S.C. § 159(c)(1). However, the law does not require the region to have a pre-election hearing over any

³ The region is in possession of sworn testimony from former Starbucks store managers who attested to the Company’s explicit purpose for the “support managers”—make sure at least one manager is in the store at all times to prevent any talk of unionization and to surveil all employee activity.

issue the parties want to litigate. A Regional Director is empowered with vast discretion to analyze proffered evidence and determine the issues that are truly in dispute at the hearing. The RD should exercise this power in order to uphold the integrity of its administrative processes and the employees' Section 7 rights in future cases.

Starbucks should be required to make an offer of proof in support of its assertion that the only appropriate unit is multi-location. If it is unable to show that it could meet its burden, it should be barred from litigating the issue.

Dated: Buffalo, NY
February 9, 2022

Respectfully submitted,

A handwritten signature in blue ink that reads "Ian Hayes". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Ian Hayes
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EXHIBIT A
Pending Representation Cases Involving Starbucks and Workers United

Location	Case No(s)	Date Filed	Hearing Start
Buffalo I	03-RC-282115	8/30/21	9/22/21
	03-RC-282-127	8/30/21	9/22/21
	03-RC-282139	8/30/21	9/22/21
Buffalo II	03-RC-285929	11/9/21	12/2/21
	03-RC-285986	11/9/21	12/2/21
	03-RC-285989	11/9/21	12/2/21
Mesa I	28-RC-286556	11/18/21	12/10/21
Boston I	01-RC-287618	12/13/21	1/10/22
	01-RC-287639	12/13/21	1/10/22
Seattle I	19-RC-287954	12/21/21	1/12/22
Knoxville	10-RC-288098	12/27/21	1/18/22
Chicago I	13-RC-288328	1/3/22	2/7/22
	13-RC-288667	1/10/22	2/7/22
Louisville, CO	27-RC-288318	12/30/21	1/24/22
Eugene I, OR	19-RC-288594	1/7/22	1/28/22
Chicago II	13-RC-288994	1/14/22	2/7/22
	13-RC-288995	1/14/22	2/7/22
Cleveland	08-RC-288697	1/10/22	2/3/22
Hopewell, NJ	22-RC-288780	1/11/22	2/2/22
Tallahassee	12-RC-288866	1/11/22	2/7/22
Mesa II	28-RC-289033	1/18/22	2/8/22
Boston II	01-RC-289077	1/18/22	2/8/22
	01-RC-289055	1/18/22	2/8/22
Richmond, VA	05-RC-289213	1/18/22	2/10/22
Richmond, VA	05-RC-289221	1/20/22	2/10/22
Memphis	15-RC-289150	1/19/22	2/10/22
Baltimore	05-RC-289214	1/20/22	2/10/22
Santa Cruz	32-RC-289828	1/31/22	2/22/22
	32-RC-289855	2/1/22	2/22/22
Boston III	01-RC-289350	1/21/22	2/11/22

Watertown MA	01-RC-289330	1/21/22	2/11/22
Seattle II	19-RC-289458	1/25/22	2/14/22
	19-RC-289455	1/25/22	2/14/22
Atlanta, GA	10-RC-289571	1/27/22	2/16/22
Denver	27-RC-289608	1/27/22	
Philadelphia, PA	04-RC-289708	1/28/2022	2/18/22
	04-RC-289746	1/28/2022	2/18/22
Everett, WA	19-RC289827	1/31/2022	2/22/2022
Clinton Tp, MI	07-RC-289840	1/31/22	
Ann Arbor, MI	07-RC-289821	1/31/22	
Grand Blanc, MI	07-RC-289860	1/31/22	
Beaverton & Portland, OR	19-RC-289812	1/31/22	2/22/2022
	19-RC-289814	1/31/22	2/22/2022
	19-RC-289854	2/1/22	2/22/2022
Eugene II, OR	19-RC-289816	1/31/22	2/22/2022
	19-RC-289817	1/31/22	2/22/2022
	19-RC-289815	1/31/22	2/22/2022
	19-RC-290060	2/4/22	2/25/22
Ithaca, NY	03-RC-289796	2/1/22	
Ithaca, NY	03-RC-289805	2/1/22	
Ithaca, NY	03-RC-289793	2/1/22	
Buffalo, NY	03-RC-289785	2/1/22	
Rochester, NY	03-RC-289801	2/1/22	
Rochester, NY	03-RC-289802	2/1/22	
Philadelphia II	04-RC-290056	2/4/2022	2/25/2022
	04-RC-290064	2/4/2022	2/25/2022
Kansas City, MO	14-RC-289926	2/2/22	2/24/22
	14-RC-289930	2/2/22	2/24/22
Chatsworth CA	31-RC-289988	2/2/22	2/24/22

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 3

WORKERS UNITED,

Petitioner

-and-

STARBUCKS CORPORATION,

Employer.

03-RC-289785
03-RC-289793
03-RC-289796
03-RC-289801
03-RC-289802
03-RC-289805

CERTIFICATE OF SERVICE

I certify that the Union's Motion to Bar Evidence was electronically filed on February 9, 2022 through the NLRB E-filing system, and were served via email to the below on the same day:

Linda Leslie, Regional Director, NLRB Region 3, linda.leslie@nrlrb.gov

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/s/ Ian Hayes
Ian Hayes
Hayes Dolce
Attorneys for Workers United

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 3**

STARBUCKS CORPORATION

Employer

and

WORKERS UNITED

Petitioner

Case Nos.: **03-RC-289785**
 03-RC-289793
 03-RC-289796
 03-RC-289801
 03-RC-289802
 03-RC-289805

**EMPLOYER’S RESPONSE TO PETITIONER’S MOTION TO BAR RECEIPT OF
EVIDENCE PURSUANT TO 29 C.F.R. § 102.66(c)**

On February 1, 2022, Workers United filed petitions in Case Nos. 03-RC-289785, 03-RC-289793, 03-RC-289796, 03-RC-289801, 03-RC-289802 and 03-RC-289805 seeking to represent a unit of full-time and part-time baristas, shift supervisors, and assistant store managers in six Starbucks stores in Ithaca, Rochester, and Buffalo. Prior to Starbucks filing its Statements of Position in all six cases on February 11, 2022, Workers United, on February 9, 2022, filed a motion to bar receipt of evidence regarding Starbucks’ “expected assertion that a single-store unit is inappropriate and to bar the Hearing Officer’s receipt of any further evidence unless the offer of proof is sufficient to sustain Starbucks’ position” (Petitioner Brief at p. 1). This motion seeks

to preempt and predict the issues Starbucks intends to litigate and presupposes the evidence the Company will offer based on a small sample size of cases from a handful of stores.

The Board's regulations clearly provide that Starbucks is permitted to put on a case for the appropriate unit. Rule 102.66(c) clearly provides that **“in no event shall a party be precluded from introducing relevant evidence** otherwise consistent with this subpart.” 29 C.F.R. 102.66(c) (emphasis added). The relevant evidence Petitioner seeks to exclude (and which it has sought to exclude in the past) is evidence regarding which employees will make up the bargaining unit. Petitioner continues to argue that the unit is exclusively made up of full-time and part-time baristas and shift supervisors at each of the six petitioned-for stores. Starbucks, on the other hand, believes that the proper unit should be multilocation units that include the petitioned-for stores due to, among other things, Starbucks' centralized control over the stores and extensive employee interchange.

Rule 102.66(a) broadly provides that “any party” has “the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation and the other issues in the case that have been properly raised.” 29 C.F.R. 102.66(a). When there is reasonable cause to determine that a question concerning representation exists, the Regional Director's authority under Rule 102.66(c) to require an offer of proof cannot be exercised so broadly that it obviates Starbucks' right under Rule 102.66(a) to present relevant evidence that can resolve the question concerning representation.

To be sure, it is for that reason that Rule 102.66(c) definitively states that parties shall not be “precluded from introducing relevant evidence” 29 C.F.R. 102.66(c). This provision,

which Petitioner neglected to cite in its motion, offers context to the purpose of Rule 102.66(c), which is to provide the Regional Director with a mechanism to conserve judicial resources by excluding in advance evidence that is irrelevant to the issue presented at the hearing. As discussed above, that is not the case here and “in no event” should Starbucks be precluded from presenting evidence relevant to whether Starbucks has rebutted the single-store presumption. *See also*, General Counsel Memorandum 2015-06, pp. 22-23 (explaining that “[a] notice to show cause may be issued instead of a notice of hearing if the regional director determines there is not reasonable cause to believe that a question concerning representation exists.”).

The cases the Petitioner relies upon in its motion are also not analogous and do not support the result it seeks here – i.e., to deny Starbucks a pre-election hearing on the single store issue. In *Bennett Industries, Inc.*, 313 NLRB 1363 (1994), which the Union cites in its motion, the Board upheld the Regional Director’s decision not to allow the employer to submit evidence regarding the supervisory status of certain individuals. However, the Board reached that result because the employer failed or refused to take a position on the issue. Those defects are not present here because Starbucks has offered an alternative unit – i.e., a multilocation unit, in response to each of the Union’s petitioned-for units. Additionally, Starbucks has taken a position on all issues that it intends to litigate.

In *NLRB v. Tito Contrs., Inc.*, 847 F.3d 724 (D.C. Cir. 2017), another case relied on by the Petitioner, the hearing officer required the employer to submit an offer of proof regarding an appropriate unit issue. Eleven days after the hearing, and after accepting post-hearing briefs, the Regional Director of Region 2 rejected the employer’s objections to the petitioned-for unit because the employer failed to offer an alternative unit. However, on review before a federal court, the court granted the employer’s petition for review because the Regional Director failed to adequately

consider the employer's offer of proof in the decision and direction of election. Therefore, the offer of proof in that matter did not improve efficiency and, to the contrary, resulted in an incomplete record and a remand. Similarly, here, it remains unclear how efficiency would improve in this matter by requiring Starbucks to submit written offers of proof, rather than live testimony for an estimated one to two days of hearing per city. After receiving any written offers of proof, the Regional Director would still need to issue a written decision, which if incorrect, could, like *Tito Contrs., Inc.*, create an additional step in the process.

The Board's decision in *Club Quarters Hotel Time Square-Midtown*, 02-RC-232157, 2019 NLRB LEXIS 100 (2019) (unpublished) further illustrates the concerns associated with relying upon an offer of proof in lieu of developing a full evidentiary record through a hearing. There, the Regional Director of Region 2 decided that the employer's offer of proof was insufficient to rebut the presumption regarding the appropriateness of a wall-to-wall unit (and deferred eligibility regarding the inclusion of certain individuals in the petitioned for unit). Upon review, the Board held that the offer of proof was relevant and that it was error to exclude evidence regarding the issue. Therefore, the Board remanded the case back to the Regional Director to conduct a hearing regarding the appropriateness of the unit. Although as an unpublished decision, *Club Quarters Hotel Time Square-Midtown* further illustrates the types of problems associated with applying 102.66(c) too broadly and in the manner Petitioner requested. *See also, Duke Univ.*, 2017 NLRB LEXIS 144 *1 (NLRB January 4, 2017) (Miscimarra, dissenting) ("[I]t is inappropriate for the Board to treat offers of proof as a substitute for record evidence regarding any matter that is relevant in a representation case" because an offer of proof "describes evidence that is *not* part of the 'record', which means the described matters – since they have been *excluded* from the record – cannot be the basis for any decision or appeal on the merits") (emphasis in original).

In short, Starbucks recognizes the value in judicial economy, does not seek to delay, and is willing to discuss with the Hearing Officer and Petitioner various ways to streamline the pre-election hearing during the pre-hearing conference. This includes taking judicial notice of existing records in prior related cases litigated in this Region and other regions, and attempting to reach stipulations that would obviate the need for testimony duplicative of what is already part of that record. If judicial notice of records in Region 3 and other regions is taken and other stipulations are reached, Starbucks expects that it will require only about a day or two to present its case-in-chief in each of these matters. The Regional Director's consideration and decision regarding any offer of proof, and the potential for additional procedural steps following that, would not further efficiency or the interest of judicial economy here.

Moreover, a hearing – as opposed to an offer of proof – is necessary here to resolve credibility disputes between Union witness and Starbucks' witnesses. Specifically, credibility determinations are necessary regarding statements Starbucks anticipates Union witnesses will make regarding the Store Manager's duties including the use of centralized technology tools. For example, as in previous hearings, Starbucks anticipates that Union witnesses will testify that Starbucks' Store Managers do not use technology tools such as Play Builder and Virtual Coach. In those previous hearings, the Board weighed testimony from Union witnesses, who largely testified that they believed managers did not use these tools, against Starbucks' managers, who testified that they relied upon these tools to make or assist in making decisions related to hiring, scheduling, termination, discipline, or staffing throughout their markets. Credibility determinations based on the use of these tools are critical to Starbucks' case in overcoming the single-store presumption. Accordingly, the proper way to resolve such credibility disputes is by creating an evidentiary record based upon live testimony in which the Regional Director can rely

upon when issuing a decision. Failure to do so precludes Starbucks from introducing relevant evidence and therefore creates an error and is an abuse of the Regional Director's discretion. *See* 29 C.F.R. 102.66(c). Indeed, as the Hearing Officer's Guide makes plain, the purpose of the hearing is investigatory, and to "make a full record." Depriving Starbucks of its ability to present evidence achieves the opposite objective and puts at risk the Region's processing of the instant petitions.

* * *

For these reasons, Starbucks asserts that any decision depriving Starbucks of its right to appear at a hearing and present relevant evidence regarding the appropriateness of the petitioned-for units would be in error. To be clear, an offer of proof is not an appropriate substitute for presenting relevant evidence at a hearing.¹

Dated: February 17, 2022

Respectfully submitted,

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/s/Alan I. Model

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¹ In any event, a hearing for these three geographic areas must proceed regardless of this motion and the Union's meritless effort seeking to have the Region disregard Starbucks' Statements of Position, as more fully addressed in the Company's February 15, 2022 filing with the Region.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3**

STARBUCKS CORPORATION

Employer

and

WORKERS UNITED

Petitioner

**Cases 03-RC-289801
03-RC-289802**

**ORDER GRANTING MOTION TO PRECLUDE
AND DENYING MOTION TO BAR EVIDENCE**

On February 1, 2022,¹ Notices of Representation Hearing issued with respect to cases 03-RC-289785, 03-RC-289793, 03-RC-289796, 03-RC-289801, 03-RC-289802, and 03-RC-289805. Each Notice of Representation Hearing stated in pertinent part:

...[P]ursuant to Section 102.63(b) of the Board's Rules and Regulations, Starbucks Corporation must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **noon** Eastern time on February 11, 2022.

On February 8, the undersigned issued an Order Consolidating Cases and Scheduling Hearings, consolidating cases 03-RC-289783, 03-RC-289796, and 03-RC-289805. The same order also consolidated cases 03-RC-289801 and 03-RC-289802. This order did not change the date and time on which the Employer's respective Statements of Position were to be filed. The Employer did not request an extension of time to file its Statements of Position.

On February 11, the Petitioner filed a Motion to Bar Receipt of Evidence Pursuant to 29 C.F.R. § 102.66(c) ("the February 11 motion"), arguing that previous litigation in petitions involving the same parties precludes the Employer's ability to present similar arguments absent a valid offer of proof. The Employer filed an opposition to this motion on February 16.

The timing with respect to the submission of the Employer's Statement of Position is undisputed. The Region did not receive the Employer's Statement of Position for cases 03-RC-289801 and 03-RC-289802 until 12:03 p.m. on February 11. The Petitioner received the Employer's Statement of Position for cases 03-RC-289801 and 03-RC-289802 at 12:06 p.m. on February 11.

On February 15, the Employer filed a letter with the Region ("the February 15 letter") conceding it did not serve its Statement of Position in cases 03-RC-289801 and 03-RC-289802. The Employer further admitted that it had not served its Statement of Position on the Petitioner

¹ All dates are in 2022.

until after the noon deadline on February 11. The Employer contended that these delays were minor and caused by issues it experienced in filing and serving its Statements of Position. The Employer argued that “an eight-minute delay is non-prejudicial” and asserted that the Region had excused similar delay on the part of the Petitioner in a related case concerning the filing of a post-hearing brief.² The Employer also argued that preclusion was unwarranted because of an allegedly analogous situation set forth in a regional director’s decision in *Loyola University Chicago*, case 13-RC-164618 (issued January 5, 2016). In that case, a regional director excused a one-minute delay in service of a Statement of Position by reasoning that the delay did not prejudice the petitioner in that case.

On February 17, the Petitioner filed a Motion to Preclude Pursuant to 29 C.F.R. § 102.66(d) (“the February 17 motion”). In this motion, the Petitioner argued that the Employer should be prohibited from presenting evidence or otherwise litigating the issues raised by it in the untimely-served Statements of Position.

On February 18, the Employer filed an opposition to the Petitioner’s February 17 motion, largely echoing the sentiments expressed in its February 15 letter to the Region. The Employer added that it had good cause for its failure to timely file and serve its Statement of Position and indicated that other regional directors had considered whether good cause existed to prevent preclusion of an untimely Statement of Position.

Having carefully considered the matter, I find that the Employer’s failure to timely file and serve its Statement of Position in these cases precludes it from litigating any of the issues raised in its untimely submission. As such, I am granting the Petitioner’s February 17 motion.³

Section 102.66(d) of the Board’s Rules and Regulations, as amended, states as follows regarding the consequences of failing to timely file and serve Statements of Position:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party’s Statement of Position.

As further set forth in Section 102.63(b)(1), an employer “shall file with the Regional Director and serve on the parties named in the petition its Statement of Position such that it is received by the Regional Director and the parties named in the petition by the date and time specified in the Notice of Hearing, which shall be at noon 8 business days following the issuance and service of the Notice of Hearing.” This subsection elaborates that “[t]he Regional Director may postpone the time for filing and serving the Statement of Position upon request of a party showing good cause.” The Employer made no such request here.

² Specifically, the Employer asserts that the Petitioner untimely filed its post-hearing brief in cases 03-RC-285929, 03-RC-285986, and 03-RC-285989 and that this brief was nonetheless accepted and considered by the Region.

³ In so doing, I do not rely on the Petitioner’s arguments regarding the Employer’s allegedly specious positions before the Board or before various regional offices.

The Employer's reliance on the decision and direction of election in *Loyola University Chicago* is misplaced. It is well established that the decisions of regional directors are of no precedential value. Indeed, as noted in *Watkins Security Agency of DC, Inc.*, a regional director's decision cannot be binding precedent unless the Board "effectively make[s] the regional director's decision its own, which would...require[] the Board to *grant* review and then to *adopt* the decision." 357 NLRB 2337, 2338 (2012) (emphasis in original).⁴

Additionally, the *Loyola University Chicago* decision was issued before the Board rendered its decision in *Brunswick Bowling Products, LLC*, 364 NLRB No. 96 (2016). In the latter case, the involved union timely filed its Statement of Position but did not serve this document on the other parties until 3:20 p.m. on the afternoon it was due. The Board found that the Regional Director "erred by receiving into evidence the Union's statement of position and by not precluding the Union from raising [a] contract bar issue." *Id.*, slip op. at 3. The Board specifically noted that "Section 102.66(d) does not require that prejudice to another party be shown to have resulted from a failure to comply with the statement-of-position requirement in order for preclusion to be imposed." *Id.* Thus, the Employer's argument in the instant matter that the Petitioner was not prejudiced by its delay in serving its Statements of Position is unpersuasive.⁵

As the Board noted in *URS Federal Services, Inc.*, 365 NLRB No. 1, slip op. at 2 (2016), a case involving a failure to timely serve a voter list, "it is...irrelevant that some other provisions of the Board's Rules and Regulations afford discretion to regional directors in other areas." Section 102.63(b)(1) clearly and unambiguously sets forth the timeline for submitting Statements of Position. Section 102.66(d) likewise clearly establishes the consequences for failure to meet this deadline. Indeed, in *URS Federal Services*, the Board specifically noted that in enacting the 2015 amendments to its Rules and Regulations, the Board "deliberately created certain new bright-line provisions and consequences for noncompliance...includ[ing] for the statement of position in 102.66(b) and (d)." *Id.*⁶

Though the Employer asserts that the delay in filing and serving its Statements of Position could be excused for good cause, the Board's Rules and Regulations do not provide for such in the context of an untimely-submitted Statement of Position. To be sure, other sections of the Rules and Regulations make reference to actions being permitted "upon request of a party

⁴ For the same reason, the Employer's reliance on decisions made by regional directors in *The New York Times Company*, case 02-RC-280769 (issued January 12, 2022) and *Austin Maintenance & Construction, Inc.*, 28-RC-288617 (issued January 5, 2021) is misplaced. I note, however, that in both cases, the regional director denied the motions and precluded the moving party from litigating matters contained in the untimely-submitted Statement of Position.

⁵ In subsequent cases, the Board has held that tardy service of a Statement of Position requires the imposition of preclusion. See *Ikea Distribution Services, Inc.*, 370 NLRB No. 109, slip op. at 1 (2021) (preclusion appropriate given delay in service of Statement of Position); and *Williams-Sonoma Direct, Inc.*, 365 NLRB No. 13, slip op. at 1 (2017) ("...the Regional Director was correct to preclude the [e]mployer from litigating the appropriateness of the petitioned-for unit...based on the [e]mployer's failure to timely serve its statement of position on the [p]etitioner...").

⁶ The Employer's argument that it is being treated disparately from the Petitioner insofar as the Petitioner was allegedly permitted to file an untimely brief is also unavailing. The filing of post-hearing briefs, unlike the situation presented here, is not governed by Section 102.66(d).

showing of good cause.”⁷ Indeed, a regional director may postpone the due date and time for filing of a Statement of Position upon such a showing. However, the Employer made no such request here and the Rules and Regulations make no other allowance for the late filing and service of a Statement of Position, as acknowledged by the Board in *URS Federal Service* in denoting this deadline as a bright line rule.⁸

Given the above, I conclude that the Employer’s failure to timely file and serve its Statement of Position in cases 03-RC-289801 and 03-RC-289802 preclude it from raising arguments, presenting evidence, or otherwise litigating the issues raised in its untimely Statement of Position.

Because this conclusion effectively moots the issues raised in the Petitioner’s February 11 motion, I hereby deny that motion as moot.

Dated: February 18, 2022

/s/LINDA M. LESLIE

LINDA M. LESLIE
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 3
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⁷ See, e.g., Section 102.63(a)(1) (regional director can postpone the date of a pre-election hearing upon the showing of good cause); and Section 102.66(h) (hearing officer can extend the deadline for filing post-hearing briefs upon the showing of good cause).

⁸ Even assuming that an untimely submission of a Statement of Position is excused for good cause, I would find here that the circumstances raised by the Employer do not constitute good cause. It is well established that technological glitches or issues on the part of the party submitting or serving a document does not constitute good cause. See, e.g., *American Medical Response of Maricopa LLC et al.*, 2019 WL 2099721 (2019) and *Food Services of America, Inc.*, 2012 WL 2835262 (2012). Moreover, in this case, the Employer has proffered no excuse for its untimely filing of its Statement of Position in these cases other than to suggest that it began the filing process before noon on February 11.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 3

WORKERS UNITED,

Petitioner,

03-RC-289785, 03-RC-289793,
03-RC-289796, 03-RC-289801,
03-RC-289802 and 03-RC-289805

STARBUCKS CORPORATION,

Employer.

UNION’S POST-HEARING BRIEF

Little needs to be added to what we said at the hearings held in these cases, which build on the two prior D&DEs issued in this Region, as well as the now four other D&DEs issued in other Regions.¹ The Petitioner, Workers United (“Union”), respectfully submits that the evidence sought to be proffered, even had it been accepted, would not have overcome this employer’s “heavy burden” to overturn the presumptive appropriateness of the single-store petitioned-for bargaining units.

Repeating in detail what has already been said and decided will only serve to prolong this employer’s strategy of delaying elections and certifications and undermining workers’ rights. In response to what is now over 100 *Starbucks* petitions Workers United has filed throughout the

¹ Decisions and Direction of Elections have as of the time of this submission been issued in the following proceedings: Cases 03-RC-282115, 03-RC-282127, 03-RC-282139 (October 28, 2021) (“*Buffalo I*”), *review denied* (Dec. 7, 2021) (“*Board, Buffalo I*”); Cases 03-RC-285929, 03-RC-285986, and 03-RC-285989 (January 14, 2022) (“*Buffalo II*”) (request for review pending); Case 28-RC-286556 (January 7, 2022) (“*Mesa I*”), *review denied*, 371 NLRB No. 71 (2022) (“*Board, Mesa I*”); Case 28-RC-289033 (February 18, 2022) (“*Mesa II*”); Case 19-RC-87954 (February 18, 2022) (“*Seattle I*”); Case 10-RC-288098 (February 24, 2022) (“*Knoxville*”).

United States,² Starbucks has, in lockstep, requested that “market-wide” or “district-wide” units be deemed the only appropriate unit – that is, that the single-store units proposed by the petitions must be deemed inappropriate. Those arguments have so far fallen flat – mainly because they do not overcome six decades of settled authority that single-store units in the retail industry are presumptively appropriate. This history of the relevant case law is recounted in the six D&DEs. Sixty years ago, the Board in *Save-On Drugs*, 138 NLRB 1032 (1962) abandoned its prior policy of basing unit determinations in the retail industry on the employer’s administrative or geographic organization. In *Haag Drug*, the Board held that “[o]ur experience has led us to conclude that a single store in a retail chain, like single locations in multilocation enterprises in other industries, is *presumptively* an appropriate unit for bargaining.” 169 NLRB 877 (1968) (emphasis in original). The Board added:

Absent a bargaining history in a more comprehensive unit or functional integration of a sufficient degree to obliterate separate identity, the employees’ “fullest freedom” is maximized, we believe, by treating the employees in a single store . . . as normally constituting an appropriate unit for collective bargaining purposes.

Id. Thus, as the Board stated in denying review in *Buffalo I*, “the central issue [in these cases] is whether the Employer has met its ‘heavy burden’ to overcome the presumption that the single-store units sought by the Petitioner are appropriate.” Case Nos. 03-RC-282115, 03-RC-282127, 03-RC-282139 (Dec. 8, 2021) (citing *California Pacific Medical Center*, 357 NLRB 197, 200 (2011)). The Board there went on to prescribe what Starbucks must show to overcome the single-store presumption:

To rebut this presumption, the Employer “must demonstrate integration so substantial as to negate the separate identity” of the single store units. *Id.* The Acting Regional Director set out and applied this standard, though we do not rely

² Currently there are 112 Starbucks representation proceedings that appear on the Board’s website.

on her isolated statement that “[a]n employer satisfies its burden of overcoming the single facility presumption when, in essence, it demonstrates that a single-facility unit is nevertheless arbitrary under the Board’s multi-factor analysis.” At various points in its request for review, the Employer suggests that all Buffalo-area employees must be in the same bargaining unit because they share some community of interest with those employees in the petitioned-for units. But the relevant legal question before us is whether the Employer has met its heavy burden to overcome the presumption that the three petitioned-for single store units are appropriate; the mere fact that the petitioned-for employees may share some community of interest with excluded employees does not serve to rebut the presumption.

In agreeing with the Acting Regional Director that the Employer did not meet its heavy burden here, we note that the Petitioner adduced specific evidence demonstrating that “the employees perform their day-to-day work under the immediate supervision of a local store manager who is involved in rating employee performance, or in performing a significant portion of the hiring and firing of the employees, and is personally involved with the daily matters which make up their grievances and routine problems.” *See Haag Drug*, 169 NLRB 877, 878 (1968). Although the Employer generally contends that its automated tools and company-wide policies limit store managers’ discretion over such daily matters, its conclusory and generalized testimony fails to rebut the Petitioner’s evidence that store managers play a significant role in adjusting schedules, approving time off and overtime, evaluating employees, conducting interviews and hiring employees, and imposing discipline.

With respect to interchange, . . . interchange supports the petitioned-for single-facility units. In this regard, we observe that although the Employer has demonstrated that a significant percentage of employees work “at least one shift” at another store “per year,” this is not evidence of regular interchange sufficient to rebut the single-facility presumption, especially because the data provided by the Employer indicate that the petitioned-for stores “borrow” only a very small percentage of their labor from other stores. *See Cargill, Inc.*, 336 NLRB 1114, 1114 (2001).

Finally, we agree with the Acting Regional Director, for the reasons she stated, that the remaining factors under the Board’s single-facility test – similarity of employee skills, functions, and working conditions; geographic proximity; and bargaining history – are not sufficient to rebut the single-facility presumption, especially given the lack of centralized control and interchange.

Id. at n.2.³

³ Following our hearings, on February 23 the Board issued its decision denying the employer’s request for review of the *Mesa ID&DE*. *See Starbucks Corp.*, 371 NLRB No. 71. That precedential

To paraphrase the test enunciated by *Haag Drug*, then, Starbucks, to prevail in its argument here and in every other representation proceeding it has participated in, must provide evidence either that there exists “a bargaining history in a more comprehensive unit” – which no one contends there is – “or functional integration of a sufficient degree to obliterate separate identity” of the presumptively appropriate single-store unit which “normally constitut[es] an appropriate unit for collective bargaining purposes.” In this way (as the Board concluded then and has adhered to consistently ever since) employees’ “‘fullest freedom’ is maximized.”

Overcoming the normal presumption is, the Board has stressed, a “heavy burden,” and Starbucks, unsurprisingly, would have offered nothing meaningful that it had not already previously submitted in this Region’s previously-decided cases.⁴ The rejected offers of proof Starbucks sought to furnish with regard to the six stores at issue here showed nothing new of consequence that alters the analysis this Region employed in its two prior decisions or in the four other decisions other Regions have now issued. The Company’s nationwide labor-relations practices and activities have been thoroughly analyzed by this Region and other Regions, and by the Board itself, and the evidence has established no local distinctions of any consequence that even begin to show that any individual store’s identity has been “obliterated” to such an extent that only some larger unit can be deemed appropriate.⁵

decision reiterated the analysis the Board set forth in its *Buffalo I* decision, adding that “it is well-established that infrequent, limited, and one-way interchange do not require finding a shared community of interest.” *Id.* at slip. op. 1. With respect to the employer’s general invocation of “technology” as some generalized cause to alter established Board doctrine, the decision stated: “Contrary to the Employer’s assertions, extant Board law is fully capable of taking the Employer’s modern-day technology into account,” adding that Starbucks had “not met its burden to prove that these technologies actually negate Store Managers’ autonomy over certain personnel matters in the day-to-day operation of individual stores.” *Id.* at 2.

⁴ On February 18, 2022, the Regional Director issued an Order pursuant to 29 C.F.R. § 102.66(d) barring Starbucks from presenting evidence or argument at the hearing due to its failure to timely serve the Union with its Statement of Position as required by 29 C.F.R. § 102.63(b)(1).

⁵ As we pointed out at the hearings, the proposed Offers of Proof themselves state that Starbucks would have sought to present evidence that “all stores” in these markets “follow the same exacting protocols and personnel policies as set forth in detail in the Buffalo I and Buffalo II hearings.”

Days of hearings were conducted in this Region's two prior *Starbucks* proceedings to establish quite exhaustively how this employer's stores in the Buffalo area conduct business and supervise employees. The situations in Ithaca and Rochester appear to be no different – at least, nothing in the offers of proof implied that they are. The statistics selectively cited by Dr. Thompson were of the kind produced by Starbucks at the other hearings which have occurred, all of which, the Board affirmed in its two decisions on review, were inadequate to support the claimed obliteration of the single sites' identities. What was perhaps more notable here, we pointed out at the hearing, was that seemingly the most important fact with regard to interchange – the percentages of hours and shifts worked by borrowed partners at the stores – was, without explanation, *not* mentioned as part of the Dr. Thompson's offer of proof. *Why* Starbucks or Dr. Thompson failed to mention this statistic that all eight NLRB decisions have taken pains to analyze may not be hard to imagine, but in any event omitting what would seem to be the most intuitive pieces of evidence to describe the degree of employee interchange would warrant the drawing of an unfavorable inference that, had that evidence been presented and not (seemingly) deliberately withheld, it would have been harmful to the Company's position that there is such a significant degree of employee interchange that it makes a meaningful difference between this case and all the others.⁶ See, e.g., *International Automotod Machines, Inc.*, 285 NLRB 1122,

Rochester Offer of Proof ¶ 1. c., Ithaca Offer of Proof ¶ 1. c. Those protocols and personnel policies were all deemed to be insufficient to overcome the single-store-unit presumption in the two earlier decisions. While Starbucks was precluded by the Regional Director's February 18 Order from presenting argument or evidence regarding any disputed issues, it suffered no prejudice from the exclusion of the evidence described in its proposed Offers of Proof because, had that evidence been presented, it would have been insufficient to change the result reached in the other D&DEs that the single-store units are appropriate. As stated in the Board's Rules and Regulations, "If the Regional Director determines that the evidence described in an offer of proof is insufficient to sustain the proponent's position, the evidence shall not be received." 29 C.F.R. § 102.66(c). Nothing in the rejected Offers of Proof disclosed facts that differ from the facts deemed material in all the other D&DEs that have already issued.

⁶ The Board in *Mesa I* stated with respect to the employer-interchange factor, "the key question is the nature and degree of interchange and its significance in the context of collective bargaining." *Board, Mesa I*, slip op at 1. As it is the Employer's burden to rebut the presumption, any failure by

1123 (1987) (discussing “the familiar rule, accepted by the Board, that when a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge. In particular, it may be inferred that the witness, if called, would have testified adversely to the party on that issue.” (citations omitted)). It would have been proper to draw such an adverse inference had Starbucks been allowed to present its evidence at this proceeding, and that further underscores the lack of prejudice to Starbucks by refusing to allow it present

the Company to provide information relative to interchange simply detracts from its satisfying that burden. *See Seattle I*, p.14 (“where the amount of interchange is unclear both as to scope and frequency because it is unclear how the total amount of interchange compares to the total amount of work performed, the burden of proof is not met” (citing *Cargill*, 336 NLRB 1114 (2001) and *Courier Dispatch Group*, 311 NLRB 728, 731 (1993))). As this Region well knows, that ratio was an important factor in the determination made in the two prior Region 3 D&DEs that the proposed single-store units were appropriate under applicable standards. *See Buffalo I* at 12-13, 21-22 (borrowed employees worked 7.1% of shifts or 5% of hours at one store and 4.4% of shifts or 3.8% of hours at a second store; that 81 % worked at a third was deemed “an outlier in the extent of interchange because it was newly opened and initially staffed by experienced employees from other stores”); *Buffalo II* at 26-27 (borrowed employees worked 2.6% of shifts or 2.1% of hours at one store, 1.3% of shifts or 1.1% of hours at a second, and 4.5% of shifts or 3.7% of hours at the third). The Board’s *Buffalo I* decision affirmed the ARD’s analysis below regarding interchange, agreeing that the “petitioned-for stores ‘borrow’ only a very small percentage of their labor from other stores” and concluding that that statistic, together with the Employer’s showing that a “significant percentage” of employees work “at least one shift” per year at another store, were “not evidence of regular interchange sufficient to rebut the single-facility presumption.” *Buffalo I* at 2 n.2 (original emphasis). The Board’s *Mesa I* decision, in approving Region 28’s similar analysis, relied on the finding that “fewer than 2 percent of shifts at Store 5610 were worked by ‘borrowed’ employees” and concluded that this did “not establish that Store 5610 employees have frequent contact with employees from other District 380 stores” and “that the employees at Store 5610 can operate with relative independence.” *Mesa I* at 1-2. All other D&DEs have similarly cited to such numbers – the hours worked by borrowed employees as a percentage of total hours worked at the store in question – in rejecting Starbucks’s assertion that single-store units are not appropriate. *See Knoxville*, pp. 35-36 (borrowed employees worked .74% of shifts or .57% of hours); *Mesa II*, p. 7 (“borrowed shifts amounted to 1.1% of shifts worked”); *Seattle*, p. 14 (“a borrowed partner only worked 3 to 5 percent of the total hours at the Broadway store in a week”). The Board’s conclusion in *Mesa I* – that “the nature and degree of interchange . . . present here does not favor rebutting the single-store presumption because it does not negate the separate community of interest the Store 5610 employees are presumed to share” (*Board, Mesa I*, slip op. at 1-2 (footnotes omitted)) – thus fully disposes of Starbucks’s contention here (which fails to fully describe that “nature and degree of interchange” at the stores at issue) that the single-store units proposed by the Union are inappropriate.

evidence and argument at the hearing. At best, Starbucks *might* have been able to show only what no one disputes – “the mere fact that the petitioned-for employees may share some community of interest with excluded employees” – which, the Board reaffirmed in *Buffalo I*, “does not serve to rebut the presumption.”

This case thus simply continues Starbucks’s pattern of insisting (contrary to the ideal that the parties’ interests are best served by conducting administrative proceedings that will be meaningful, worthwhile and non-wasteful) that it should get more than a single bite at the apple. Four Regions have now evaluated similar evidence and arguments to conclude that each company-owned Starbucks store is an appropriate unit for a Board election for its employees. Starbucks’s centralized structure, made up of thousands of individual cookie-cutter operations, is the norm for large American retail chains. Uniformity is precisely what these chains sell and what customers expect. Consumers who want a different product or different service go elsewhere. Yet, that uniformity and consistency may be a retailer’s *sine qua non* does not, the Board recognizes, undermine the right of employees to seek an election in the single store where they and their coworkers engage in most of their daily work activities. And technological advances, as Starbucks has suggested, have not in some undescribed fashion served somehow to *change* settled doctrine that accommodates employees’ rights under the Act, or to lift the presumption established six decades ago which safeguards workers’ enjoyment of the right to organize and to have the Board conduct representation proceedings reasonably free of their employers’ efforts to sidetrack the process. There is no hint in Board case law that technology undermines the validity of the single-unit presumption that has served employees well over many decades and furthered the underlying purposes of the Act. *See Starbucks*, 371 NLRB No. 71 at 2 (“extant Board law is fully capable of taking the Employer’s modern-day technology into account”). Trolling the Labor Board’s Regions in search for different outcomes – the strategy

Starbucks appears committed to follow – is a pattern that the Board should no longer condone. The evidence, here and elsewhere, consistently fails to show that the identity of *any* Starbucks store has been obliterated to the degree that only some broader multi-store unit can be said to be appropriate.

The Act as written protects the rights of employees, not employers. Section 7 addresses solely the rights “employees” possess. That the Act is a vehicle to protect employees’ rights to engage in collective and concerted activity is the underlying source of the Board’s *Haag Drug* approach – it is of key importance to the holding of that case that employees’ request for a single-site unit be honored in the normal course, absent extremely compelling reasons amounting to a showing that the single-store unit has been “obliterated” – that is, that in this particular employer’s operations, there *is* no appropriate single-store unit. Presenting that same argument over and over – literally what has happened here and elsewhere – makes a mockery of the Board’s processes and denudes employee rights.⁷ The relevant issues have already been decided in the other D&DEs already issued.⁸ As confirmed by the Company’s written offers of proof, it would have been able to produce nothing new here.

⁷ Labor law concerns raised in these cases mirror corporate-governance issues that have begun to be discussed more publicly. The *New York Times* reported several days ago that stockholders have questioned the Company’s “devoting quite a bit of time and money to putting forward these arguments in front of the NLRB” that “doesn’t feel like they’re using investor resources – stakeholder resources – that well.” Noam Scheiber, “Workers Vote to Make Arizona Starbucks 3rd Unionized Store,” (February 25, 2022) (available at <https://www.nytimes.com/2022/02/25/business/economy/starbucks-union-vote-mesa-arizona.html>). As a management-side lawyer asked, as reported in the same piece, “How many losses do you have before you change strategy?” *Id.*

⁸ Indeed, had Starbucks been permitted to present its position here, any arguments regarding the Buffalo store at issue would have been foreclosed by the doctrines of law-of-the-case or issue preclusion, as the Board’s *Buffalo I* decision (rejecting the Company’s “suggest[ion] that all Buffalo-area employees must be in the same bargaining unit”) disposes of the single unit issue in the Buffalo geographic area. And the unit-appropriateness of the stores in Ithaca and Rochester would also have been foreclosed on the merits by the dispositive analysis appearing in the Board’s *Buffalo I* and *Mesa I* decisions, which thoroughly disposed of the indistinguishable contentions Starbucks has sought to raise in this case.

Any further delay will do nothing but continue to frustrate the employees' legitimate expectation that the Act was intended to help them exercise their rights, not to be a roadblock or to assist employers in a subterfuge. An election should be held in these six bargaining units without any further undue delay.

The petitioner, Workers United, respectfully requests that the Regional Director direct elections in the single-store units requested in these petitions.

Respectfully submitted,

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Date: March 1, 2022

Starbucks Corporation) **Case Nos. 03-RC-289785, 03-RC-289801, 03-RC-**
and) **289802, 03-RC-289805, 03-RC-289793, 03-RC-**
Workers United.) **289796.**

I certify that the Union's Post Hearing brief in the above-captioned cases was electronically filed on February March 1, 2022, through the Board's website and served via email upon the following on March 1, 2022 before 11:59 P.M. EST:

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Dated: March 1, 2022

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3**

STARBUCKS CORPORATION

Employer

and

WORKERS UNITED

Petitioner

Case Nos.: 03-RC-289785

03-RC-289793

03-RC-298796

03-RC-289801

03-RC-289802

03-RC-289805

**POST-HEARING BRIEF ON BEHALF OF
STARBUCKS CORPORATION**

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INTRODUCTION

On February 1, 2022, Workers United (“Union”) filed six representation petitions in Case No. 03-RC-289785 (the “Buffalo Matter”); Case Nos. 03-RC-289793, 03-RC-298796, and 03-RC-289805 (the “Ithaca Matter”); and Case Nos. 03-RC-289801, 03-RC-289802 (the “Rochester Matter”), seeking to represent all Baristas, Shift Supervisors, and Assistant Store Managers at the six individual Starbucks Corporation (“Starbucks” or “Company”) stores. In accordance with the Regional Director’s Orders dated February 18, 2022, Starbucks was precluded from presenting evidence at the representation hearings for all six petitions. At the “hearings” held on February 22, Starbucks made multiple offers of proof detailing the evidence it was prepared to present in support of its arguments that the petitioned-for single-store units were inappropriate. Had Starbucks been able to present evidence in these matters, the documentary evidence and testimony would have shown that the petitioned-for single-store units are inappropriate and the only appropriate units are multi-location units that include the petitioned-for single stores. However, the Hearing Officer summarily rejected Starbucks’ offers of proof, and in doing so committed manifest error in contravention of the Board’s rules. In addition, the Union failed to present any evidence in support of its contention that the petitioned-for single-store units are appropriate. The Hearing Officer’s denial of Starbucks’ right to present evidence and litigate the appropriateness of the petitioned-for units, coupled with the Union’s failure to present any evidence in support of its petitioned-for units, renders the Regional Director incapable of making a unit determination as required by Section 9(b) of the Act.

On March 1, 2022, Starbucks filed Requests for Review with the Board regarding the Regional Director’s February 18 Orders precluding Starbucks from presenting evidence and litigating the appropriateness of the petitioned-for units. The Regional Director should await the

Board's ruling such Requests for Review before further processing the instant petitions. Should the Regional Director not do so, any Decisions and Direction of Election she issues will be subject to further appeal to the Board as the record is devoid of evidence on which the Regional Director may rely to assess the appropriateness of the petitioned-for units in accordance with Section 9(b) of the Act to protect the rights of Starbucks' partners.

I. BACKGROUND FACTS AND PROCEDURAL HISTORY

On February 1, 2022, the Union filed six representation petitions seeking to represent all Baristas, Shift Supervisors, and Assistant Store Managers at six individual Starbucks stores. The Statement of Position submissions for all six petitions were due on February 11, 2022 at 12:00 p.m.

Starbucks worked diligently to prepare Statements of Position and supporting documents in advance of the 12:00 p.m. deadline. They were in the possession of the legal assistant assigned to perform the filing and service by 10:45 a.m., and the filing process commenced shortly thereafter. The Buffalo Matter Statement of Position, composed of four separate documents, was filed at 11:15 a.m. The Ithaca Matter Statement of Position, composed of eleven separate documents, was filed at 11:58 a.m. The Rochester Matter Statement of Position, composed of seven separate documents, was stamped as filed at 12:03 p.m.

Starbucks tried twice to serve the documents on the Union prior to 12:00 p.m. but was prevented from doing so due to a series of unforeseeable administrative difficulties. Specifically, at 11:57 a.m., Starbucks' counsel, attempted to serve the Statements of Position for all three matters on the Union by email. When counsel attempted to do so, Microsoft Outlook crashed, and counsel was required to restart the application. Just before 12:00 p.m., counsel attempted to send the complete service email a second time but was again prevented from doing so when Outlook crashed again. Based upon information and belief, counsel states that these two crashes in the

Outlook software were occasioned due to the size of the files. Indeed, Starbucks was only able to transmit these files in the same email after creating “zip files” which themselves contained “sub-zip files” that condensed the overall file size and enabled electronic transmission. Simply put, Starbucks’ counsel worked diligently to ensure filing and service was complete before 12:00 p.m., and when that did not occur, counsel made every effort to get the Statements of Position served as soon as possible, resulting in the Union receiving the Statements of Position via email a mere eight minutes late. As Statements of Position are e-served through the NLRB’s site, it is likely the Union actually received the Statements of Position electronically before 12:08 p.m.

On February 15, 2022, Starbucks wrote to Hearing Officer Thomas A. Miller regarding the filing and service of its Statements of Position, explaining that all filings were complete or in process at 12:00 p.m. on February 11, that Starbucks had repeatedly attempted to complete service before 12:00 p.m., and requesting the opportunity to put on evidence in light of the minimal delays and the absence of any evidence or claim of prejudice on the part of the Union. No response was received.

On February 17, 2022, the Union filed a motion to preclude Starbucks from introducing evidence based on the untimely filing. On February 18, 2022, Starbucks filed a response in opposition to the Union’s motion to preclude evidence. On February 18, 2022, the Regional Director issued three virtually identical Orders (Board Exhibit 1(o) “Ithaca”; Board Exhibit 1(g) “Buffalo”; Board Exhibit 1(i) “Rochester”) precluding Starbucks from presenting evidence at hearing. The Regional Director held that, pursuant to Rule 102.66(d) “the Employer’s failure to timely file and serve its Statement of Position in these cases precludes it from litigating the issues raised in its untimely submission.” (Orders at p. 2). On February 19, 2022, the Hearing Officer emailed the parties and advised that because of the Regional Director’s Orders, he was “not to

permit litigation of any of the issues raised in the Employer’s Statements of Position.” (Buffalo Er. Ex. 5).¹

On February 22, 2022, the Board held hearings *ad seriatim* for all three matters.

a. The Buffalo Hearing

The Hearing Officer precluded Starbucks from presenting any testimony or evidence on the appropriateness of the petitioned-for unit, stating: “the Regional Director has directed that there are no issues to be litigated in this proceeding. Specifically, the Regional Director has instructed me to inform the parties . . . that the Employer is precluded from raising any arguments or litigating any matters included in its untimely served statement of position.” (Buffalo Tr. at 8). He clarified that:

[B]ecause there are no issues to be litigated, there—there are no witnesses that—that the Employer can present because their case has been precluded by the Regional Director’s order. And because there are no issues to be litigated, I don’t expect for the Petitioner to call any witnesses. And—and if they would like to do so, I’ll entertain an offer of proof to that effect. But given that the Petitioner is seeking a presumptively appropriate single facility and—and inside that facility is seeking a presumptively appropriate wall-to-wall unit, the—the Regional Director has instructed me that there—there’s nothing to litigate. There are no witnesses that need to testify at this proceeding.

(Buffalo Tr. at 9).

Starbucks proffered eight exhibits, all of which were rejected by the Hearing Officer. Starbucks first offered Employer Exhibit 1, a written offer of proof for the testimony of Buffalo Market District Manager Michaela Murphy and Dr. Matthew Thompson, PHD, Vice President and Practice Leader of Labor and Employment of Charles River Associates. (Buffalo Tr. at 12; Buffalo Er. Ex. 1). This offer of proof described Starbuck’s centralized control over labor relations

¹ References to the Buffalo Matter are referred to as “Buffalo Tr. at ____.” References to the Ithaca Matter are referred to as “Ithaca Tr. at ____.”¹ References to the Rochester Matter are referred to as “Rochester Tr. at ____.”

functions in the Buffalo Market, and the high level of partner interchange across stores in the Buffalo market. (*Id.*). Despite the fact that the Employer presented evidence to dispute the appropriateness of the petitioned-for unit, the Hearing Officer summarily rejected the offer of proof. (Buffalo Tr. at 26). Starbucks offered seven other exhibits relating to the filing of its Statement of Position, all of which were rejected by the Hearing Officer.² Notably, the Union did not present any evidence whatsoever in support of its argument that the petitioned-for unit constituted an appropriate unit within the meaning of the Act, or to counter Starbuck's offer of proof.

b. The Ithaca Hearing

The hearing on the Ithaca matter was the second hearing on February 22, 2022. The Hearing Officer reiterated that Starbucks was precluded from presenting any evidence in support of the arguments raised in its Statement of Position. (Ithaca Tr. at 8). Starbucks proffered eight exhibits, all of which were rejected by the Hearing Officer. Starbucks first offered Employer Exhibit 1, a written offer of proof for the testimony of Regional Director Mallori Coulombe, District Manager Brittany Cahill, and Dr. Thompson. (Ithaca Tr. at 10; Ithaca Er. Ex. 1). This offer of proof described Starbuck's extensive centralized design and control over store operations and labor functions in District 6782 and the high level of partner interchange across stores in the District. (*Id.*). Despite the fact that the Employer presented evidence to dispute the appropriateness of the petitioned-for units, the Hearing Officer summarily rejected the offer of proof. (Ithaca Tr. at 12). Starbucks offered seven other exhibits relating to the filing of its Statement of Position, all

² Starbucks's exhibits included: Starbucks' Statement of Position (Buffalo Er. Ex. 2); affidavits from Alice Kirkland, Esq. and Marie Duarte, Esq. (Buffalo Er. Ex. 3-4) describing filing and serving efforts; a letter from Alan Model to the Hearing Officer on February 15, 2022 re: the procedures to be followed at the hearing (Buffalo Er. Ex. 5); an email response from the Hearing Officer dated February 19, 2022 precluding the employer from submitting evidence and testimony at the hearing (Buffalo Er. Ex. 6); Starbucks' response to the Union's motion to preclude (Buffalo Er. Ex. 7); and the Union's motion to preclude (Buffalo Er. Ex. 8).

of which were rejected by the Hearing Officer.³ Notably, the Union did not present any evidence whatsoever in support of its argument that the petitioned-for single-store units constituted appropriate units within the meaning of the Act.

c. The Rochester Hearing

The hearing on the Rochester matter was the third hearing on February 22, 2022. The Hearing Officer reiterated that the Employer was precluded from presenting any evidence in support of the arguments raised in its Statement of Position. (Rochester Tr. at 10-11). Starbucks proffered eight exhibits, all of which were rejected by the Hearing Officer. Starbucks first offered Employer Exhibit 1, a written offer of proof for the testimony of Regional Director Mallori Coulombe, District Managers Brittany Cahill and Shelby Young, and Dr. Thompson. (Rochester Tr. at 10; Rochester Er. Ex. 1). This offer of proof described Starbucks's extensive centralized design and control over store operations and labor functions in the Rochester Market and the high level of partner interchange across stores in the Market. (Id.). Despite the fact that the Employer presented evidence to dispute the appropriateness of the petitioned-for single-store units, the Hearing Officer summarily rejected the offer of proof. (Rochester Tr. at 12). Starbucks offered seven other exhibits relating to the filing of its Statement of Position, all of which were rejected by the Hearing Officer.⁴ Notably, the Union did not present any evidence whatsoever in support

³ Starbucks's exhibits included: Starbucks' Statement of Position (Ithaca Er. Ex. 2); affidavits from Alice Kirkland, Esq. and Marie Duarte, Esq. (Ithaca Er. Ex. 3-4) describing filing and serving efforts; a letter from Alan Model to the Hearing Officer on February 15, 2022 re: the procedures to be followed at the hearing (Ithaca Er. Ex. 5); an email response from the Hearing Officer dated February 19, 2022 precluding the employer from submitting evidence and testimony at the hearing (Ithaca Er. Ex. 6); Starbucks' response to the Union's motion to preclude (Ithaca Er. Ex. 7); and the Union's motion to preclude (Ithaca Er. Ex. 8).

⁴ Starbucks's exhibits included: Starbucks' Statement of Position (Rochester Er. Ex. 2); affidavits from Alice Kirkland, Esq. and Marie Duarte, Esq. (Rochester Er. Ex. 3-4) describing filing and serving efforts; a letter from Alan Model to the Hearing Officer on February 15, 2022 re: the procedures to be followed at the hearing (Rochester Er. Ex. 5); an email response from the Hearing Officer dated February 19, 2022 precluding the employer from submitting evidence and testimony at the hearing (Rochester Er. Ex. 6); Starbucks' response to the Union's motion to preclude (Rochester Er. Ex. 7); and the Union's motion to preclude (Rochester Er. Ex. 8).

of its argument that the petitioned-for units constituted appropriate units within the meaning of the Act.

ARGUMENT

I. THE REGIONAL DIRECTOR'S INTERPRETATION AND APPLICATION OF RULE 102.66(D) WAS ERRONEOUS, INCONSISTENT WITH THE PURPOSE OF THE RULE, AND UNDULY PREJUDICIAL TO STARBUCKS AND THE PARTNERS WHOSE INTERESTS THE ACT SEEKS TO PROTECT.

The Rules and Regulations that govern proceedings under the National Labor Relations Act ("Act") are contained in 29 C.F.R. § 102.1, *et. seq.* In particular, with respect to RC petitions, the Rules provide:

If a petition has been filed under [§ 102.61\(a\)](#) and the Regional Director has issued a Notice of Hearing, the employer shall file with the Regional Director and serve on the parties named in the petition its Statement of Position such that it is received by the Regional Director and the parties named in the petition by the date and time specified in the Notice of Hearing, which shall be at noon 8 business days following the issuance and service of the Notice of Hearing. **The Regional Director may postpone the time for filing and serving the Statement of Position upon request of a party showing good cause. The Regional Director may permit the employer to amend its Statement of Position in a timely manner for good cause.**

29 C.F.R. § 102.63(b)(1) (emphasis added).

Section 102.66 relates specifically to how hearings in representation matters will be conducted. It reads:

(a) Rights of parties at hearing. Any party shall have the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation and the other issues in the case that have been properly raised. The Hearing Officer shall also have power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses shall be examined orally under oath. The rules of evidence prevailing in

courts of law or equity shall not be controlling. Stipulations of fact may be introduced in evidence with respect to any issue.

(b) Statements of Position. Issues in dispute shall be identified as follows: After a Statement of Position is received in evidence and prior to the introduction of further evidence, all other parties shall respond on the record to each issue raised in the Statement. The Regional Director may permit any Statement of Position to be amended in a timely manner for good cause, in which event the other parties shall respond to each amended position. The Regional Director may also permit responses to be amended in a timely manner for good cause. The Hearing Officer shall not receive evidence concerning any issue as to which parties have not taken adverse positions, except that this provision shall not preclude the receipt of evidence regarding the Board's jurisdiction over the employer or limit the Regional Director's discretion to direct the receipt of evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the Regional Director determines that record evidence is necessary.

...

(d) Preclusion. A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition.

29 C.F.R. § 102.66.

Critically, all of the aforementioned rules are, per Rule 102.121, to be “liberally construed to effectuate the purposes and provisions of the Act.” 29 C.F.R. § 102.121.

The Regional Director’s decision to preclude the presentation of any evidence based on an eight-minute delay does not comport with the purpose of Rule 102.66(d) and is contrary to the purposes of the Act. When Rule 102.66(d) was initially adopted, the Board explained its adoption as motivated by concerns that “parties sometimes do not share the information solicited by the statement of position form prior to the hearing, or they take shifting positions on the issues at the

hearing. Such conduct impedes efforts to reach election agreements or hold orderly hearings.”

Final Rule. Representation – Case Procedures, 79 FR 74308-01, 2014 WL 7007229 (December 15, 2014). Two years later, the purposes of Rule 102.66(d) were described as follows:

to narrow the scope of the pre-election hearing, focus the parties' attention on the issues that are actually in dispute, permit all parties to prepare for the hearing, and facilitate the negotiation of an election agreement, which would make a hearing unnecessary.

Brunswick Bowling Prods., 364 NLRB No. 96, slip op. at 3. In context, and with these statements of purpose in mind, it is clear that the rule was not intended to prevent Regional Directors from exercising discretion or to remove the requirement that a meaningful hearing take place where no intent to deceive or prejudice was evident. Indeed, Rule 102.66(b) clearly protects against a bright line interpretation of Section 102.66(d) by stating that the regional director maintains “discretion to direct the receipt of evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.” Furthermore, pursuant to Rule 102.66(b) “the Regional Director may permit any Statement of Position to be amended in a timely manner for good cause,” but that authority makes little sense if the Regional Director cannot permit a Statement of Position to be filed and/or served even a moment after noon on the day it is due. The Regional Director perhaps seeks to avoid this issue by noting that Starbucks did not seek an extension of time (Orders at 1), but this makes no sense; the technical difficulties leading to an eight-minute delay in service occurred at the time of filing, and filing such a motion simply would have delayed matters further. In any event, Starbucks notified the Region and the Union of the delay on February 15 and requested to be heard on the matter without response from the Region.

In sum, if the Regional Director is correct that Rule 102.66(d) imposes a *per se* preclusion rule without discretion, despite the holdings of the Board and other regional directors on this issue,

such a rule grossly elevates form over substance, especially in the circumstances of this case where the issues are well-known and the hearing was still eleven days away. Such a *per se* rule also fails to account for the Regional Director's clear discretion to allow late filings, last minute amendments, and ability to receive evidence despite a late filing or service of a statement of position, in order to effectuate the purposes of the Act by investigating the appropriateness of a petitioned-for unit.

II. BY FAILING TO HOLD MEANINGFUL HEARINGS, AS REQUIRED BY SECTION 9 OF THE ACT, THE REGIONAL DIRECTOR DEPRIVED STARBUCKS OF DUE PROCESS OF LAW.

Section 9 of the Act requires that, in each case, the Board determine whether the petitioned-for unit is appropriate before conducting an election. 29 U.S.C. § 159(b). The law “tasks the Board with deciding ‘in each case . . . the unit appropriate for the purposes of collective bargaining.’” *Alaska Communs. Sys. Holdings v. NLRB*, 6 F.4th at 1293 (citing 29 U.S.C. § 159(b)). Additionally, the Board's own regulations require the hearing officer to “inquire fully into all matters and issues necessary to obtain a full and complete record.” 29 C.F.R. § 102.64(b). In the “investigatory context” of a pre-election hearing, “all persons concerned have the duty to produce all information relevant to the issue.” *Id.* at 1298 (quoting *State Farm Mut. Auto. Ins. Co.*, 411 F.2d at 360). This investigation allows the “Board to fulfill its statutory function with respect to the certification of bargaining representatives.” *Id.*

While Section 102.66(d) of the Rules precludes a party from raising arguments not made in a timely Statement of Position, the rule is not an absolute bar to the receipt of evidence. Indeed, the Board in *Brunswick Bowling* specifically acknowledged that the Board's Rules and Regulations provide a clear failsafe allowing the Board to obtain all the relevant evidence it needs to conduct an investigation envisioned under the law. Specifically, Section 102.66(b) provides that the regional director maintains “discretion to direct the receipt of evidence concerning any issue,

such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.” 29 C.F.R. § 102.66(b). This “rule ‘ensures that the Board will have sufficient evidence in the record to make an appropriate unit determination,’ as ‘it is the Board’s responsibility under Section 9(b) of the Act to make appropriate unit determinations.’” *Alaska Communs. Sys. Holdings*, 5 F.4th at 1297 (citing Representation – Case Procedures, 79 Fed. Reg. 74,308, 74,365 (Dec. 15, 2014)). In fact, To Section 9(c) of the Act specifically requires the Board to hold a hearing for this purpose, absent an agreement between the parties waiving the same.

The cases cited by the Regional Director in her orders specifically stand for the proposition that a hearing, complete with the taking of relevant evidence, should be conducted even where a party has been properly precluded from presenting litigating its case. For example, the Board previously held that notwithstanding the preclusion caused by Section 102.66(d), the “rule [did] not, however, preclude any other party from raising an issue, nor [did] it preclude the regional director from addressing an issue.” *Brunswick Bowling*, 364 NLRB No. 96, slip op. at *4. Similarly, in *URS Federal Services*, like in *Brunswick Bowling*, the regional director was permitted to consider issues within the statement of position because section 102.66(b) “expressly grants regional directors discretion to receive evidence necessary to resolve certain preelection issues.” 365 NLRB No. 1, slip op. at *2 (2016).

Here, the Regional Director’s preclusion Orders improperly foreclosed the possibility of receiving evidence and deprived the Board of the ability to investigate the appropriate unit. Based on these Orders, the Hearing Officer declined to accept evidence from Starbucks even though it is well-accepted in representation case practice that is the employer who has the most relevant evidence and often presents first in representation case hearings. In other cases relied upon by the Regional Director, the Board still chose to receive or entertain evidence despite preclusion under

102.66(d). For example, in *Ikea*, the Board found that while the statement of position was not timely served, the Regional Director’s “discretion to direct the receipt of evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the Regional Director determines that record evidence is necessary” was not limited. *Ikea Distribution Services, Inc.*, 370 NLRB No. 109 at *2 (citing *Brunswick Bowling*, 364 NLRB No. 96). The hearing officer in that case “permitted the Employer to make certain offers of proof, to submit certain exhibits to complete the record (entered as Board exhibits), and to make witnesses available for examination by the hearing officer, in order to make a complete record.” *Id.* The Board found this to be “the inquiry contemplated by Section 102.66(b)” *Id.*

Likewise, in *Williams-Sonoma*, the Board explained that “the hearing officer permitted the Employer to make an oral and written offer of proof with regard to whether the petitioned-for unit is an appropriate unit.” 265 NLRB No. 13 at *2. While the evidence was not received, there was still testimony from the petitioner and from current employees regarding the work they performed and the terms and conditions of their employment. *Id.* at *3. And all of this is required by Sections 9(b) and 9(c) of the Act, which *require* the Board to determine the appropriate unit for collective bargaining, and, in the absence of an election agreement, to hold a hearing on such matters. Therefore, since the Regional Director’s decision to bar the receipt of evidence is not in accordance with previous Board decisions and prohibits the hearing officer from conducting a full investigation and required by Section 9, the Board should review and reverse the Regional Director’s preclusion orders.

As the U.S. Supreme Court has recognized, procedural due process requires that some form of hearing be held before the government deprives a citizen of a liberty or property interest. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). “The fundamental requirement of due process is

the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Id.* (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). In this case, the question of whether Starbucks must engage with the Union on a store-by-store basis or on a multi-location basis directly implicates Starbucks’ freedom of association in terms of whether it must negotiate and contract with the Union and, if so, on what basis. Indeed, corporations rightfully enjoy the protections of the First Amendment, including the freedom of association. *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 780 (1978) (corporations enjoy the protections of the First Amendment; “Freedom of speech and the other freedoms encompassed by the First Amendment always have been viewed as fundamental components of the liberty safeguarded by the Due Process Clause.”). Freedom of association, like freedom of speech, includes the freedom *not* to associate, and, therefore, to the extent that freedom will be abridged, there can be no doubt that procedural due process is required. *See, e.g., Janus v. Am. Fed’n of State, Cty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2463 (2018) (“The right to eschew association for expressive purposes is likewise protected.”); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984) (“Freedom of association ... plainly presupposes a freedom not to associate”).

The Regional Director’s refusal to hold a meaningful hearing prior to ordering an election take place further implicates Starbucks’ property interests because any negotiations with the Union necessarily will involve the amount of wages, benefits, and other employment costs Starbucks will be required to pay pursuant to any collective bargaining agreement, and pursuant to the Act, Starbucks cannot properly be required to bargain with an inappropriate unit. Starbucks was entitled to be heard on the matter at a meaningful time and in a meaningful manner under the Fifth Amendment of the U.S. Constitution, not to mention Section 9 of the Act. The Regional Director’s order establishing a *per se* evidence and argument preclusion rule, combined with her holding of

a sham hearing during which Starbucks repeatedly made offers of proof only to have them rejected, and during which no evidence at all was offered on the unit issue, deprived Starbucks of its constitutionally mandated due process. To the extent Rule 102.66(d) requires such a result, it is arbitrary and capricious, violates the Board's statutory mandate under Section 9, and violates the procedural due process requirements of the Constitution. It must be modified (by, for example requiring statements of position to be filed and served but expressly allowing for late filings based on reasonable cause shown) or abandoned altogether.

III. THE UNION'S FAILURE TO PROFFER ANY EVIDENCE IN SUPPORT OF ITS PETITIONED-FOR SINGLE-STORE UNITS, AND THE HEARING OFFICER'S REJECTION OF THE EMPLOYER'S OFFERS OF PROOF, PRECLUDE THE REGIONAL DIRECTOR FROM DETERMINING THE APPROPRIATENESS OF THE PETITIONED-FOR UNITS.

The record in these matters is devoid of any evidence to enable the Regional Director to determine whether the petitioned-for units constitute appropriate units withing the meaning of the Section 9(b) of the Act. The Board has recognized that the Regional Director has a statutory obligation to determine whether a proposed unit is appropriate, which is not curtailed by the late filling of a statement of position. For instance, in *Williams-Sonoma Direct, Inc.*, even though the employer's Statement of Position was not timely filed, the Board still admitted evidence presented by the petitioner regarding employees' terms and conditions of employment and had current employees testify as to the work they performed and relied on this evidence when determining the appropriateness of the petitioned-for unit. 265 NLRB No. 13 at *3. Similarly, in *Ikea*, the Board "permitted the Employer to make certain offers of proof, to submit certain exhibits to complete the record (entered as Board exhibits), and to make witnesses available for examination by the hearing officer, in order to make a complete record." In *New York Times*, 02-RC-280769 (January 12, 2022), the Regional Director exercised his discretion to permit the employer to present evidence so that he could fulfill his mandate under Section 9 to make a determination as to the

appropriateness of the petitioned-for unit despite precluding the employer from presenting evidence or argument due to a late-filed attachment to its statement of position.

Thus, Board precedent is clear that the Regional Director must still seek to receive evidence in order to form a complete record from which they may decide a question on a question concerning representation. The Regional Director cannot simply ignore a question concerning representation, particularly whereas here, it has been presented with material evidence that shows that the petitioned-for single-store units are functionally integrated into a larger unit. Nor can the Regional Director rely on the Union's mere filing of a petition seeking a single-store unit as evidence that the petitioned-for single-store unit is appropriate without a scintilla of evidence that would support the petition.

Here, the Union failed to put forward *any* evidence at the three hearings in these matters regarding the appropriateness of the petitioned-for units. Although Starbucks sought to present evidence and testimony in support of its contention that the petitioned-for units were not appropriate, the Hearing Officer summarily rejected Starbucks' proffered evidence and did not admit it into the record. Simply stated, there is not a word of evidence in the hearing record as to how any of the petitioned-for stores – in Buffalo, Ithaca or Rochester operate. The fact that the Region held prior representation cases pertaining to six previously filed single-store petitions in the Buffalo Market is of no consequence because those hearing records were not stipulated to by the parties to be part of the hearing records in the instant Buffalo, Ithaca or Rochester cases. Even assuming the hearing records from the prior Buffalo Market petitions was made part of the record for any of the instant matters, the prior Buffalo Market records do not provide evidence to make appropriate unit determinations for the instant matters. As to the instant Buffalo Market petition, the Regional Director precluded Starbucks from putting on evidence as to the store's operations

and integration in the Buffalo Market, and the Union chose not to present any evidence. As to the instant Ithaca petitions, not a single work in the hearing record addresses anything about the stores and partners at issue. The Regional Director precluded Starbucks from presenting evidence about the Ithaca stores and the Union failed to proffer any evidence. The same holds true for the Rochester petitions – not a single word in the record addresses how those stores operate or the terms and conditions enjoyed by partners in Rochester because the Regional Director precluded Starbucks from presenting evidence about the Rochester petitions and the Union failed to do so.

Consequently, there is no record on which the Regional Director can determine the appropriateness of the petitioned-for units as required by Section 9(b) of the Act. Thus, any Decision and Direction of Election for any of the petitioned-for units is reversible error

CONCLUSION

For all of the foregoing reasons, the Regional Director should refrain from further processing the instant petitions until the Board rules on Starbucks' Requests for Review. Should the Regional Director choose not to await the Board's ruling, then she should reopen the records to permit Starbucks to put on evidence as to the appropriateness of the petitioned-for units in lieu of issuing decisions and directing elections. Under no circumstances should the Regional Director issue decisions and direct elections in bargaining units that result from procedural defective proceeding depriving Starbucks and its partners from the protections afforded by the mandate of Section 9(b) of the Act.

Date: March 1, 2022

Respectfully submitted,

/s/ Alan Model

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Attorneys for Starbucks Corporation

CERTIFICATE OF SERVICE

I certify that Starbucks Corporation's Post-Hearing Brief, in Case Nos. 03-RC-289785; 03-RC-289793; 03-RC-289796; 03-RC-289801; 03-RC-289802; and 03-RC-289805 was electronically filed on March 1, 2022, through the Board's website and also served via email on the following:

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s/Alan Model
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Littler Mendelson, P.C.

Attorneys for Starbucks Corporation

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Date Filed

2/1/2022

Starbucks Corporation

Employer

and

Workers United

Petitioner

Case No. 03-RC-289801

Date Issued 04/07/2022

City Buffalo

State NY

Type of Election:
(Check one:)

- ☐ Stipulation
☐ Board Direction
☐ Consent Agreement
☒ RD Direction
Incumbent Union (Code)

(If applicable check
either or both:)

- ☐ 8(b) (7)
☒ Mail Ballot

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of tabulation of ballots case in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters 41
2. Number of Void ballots 3
3. Number of Votes cast for Workers United 13
4. Number of Votes cast for N/A N/A
5. Number of Votes cast for N/A N/A
6. Number of Votes cast against participating labor organization(s) 11
7. Number of Valid votes counted (sum 3, 4, 5, and 6) 24
8. Number of challenged ballots 0
9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) 24
10. Challenges are (not) sufficient in number to affect the results of the election.
11. A majority of the valid votes counted plus challenged ballots (Item 9) has (not) been cast for Workers United

For the Regional Director

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For Starbucks Corporation

☒ Participated via videoconference

For Workers United

☒ Participated via videoconference

For

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3**

STARBUCKS CORPORATION

Employer

and

WORKERS UNITED

Petitioner

Case No.: 03-RC-289801

**STARBUCKS CORPORATION’S OBJECTIONS
TO CONDUCT OF THE ELECTION**

Pursuant to the Rules and Regulations of the National Labor Relations Board (“NLRB”), including Section 102.69, Starbucks Corporation (“Starbucks” or “Employer”) files the following Objections to Conduct of the Election in connection with the mail ballot election in Case No. 03-RC-289801.

In a March 7, 2022 Decision and & Direction of Election (D&DE), the Region directed the mailing of ballots from Region 3’s office on March 16, 2022, with eligible voters to return ballots by close of business on April 6, 2022, and a virtual ballot count set to occur on April 7, 2022. The Employer timely-filed a Request for Review, which the Board ruled upon prior to the scheduled count on April 7, 2022. Accordingly, the count proceed as set forth in the D&DE.

In the days prior to the vote count, multiple partners expressed concern to Starbucks that they had not received their ballots. Certain partners stated that they contacted the Region seeking ballots and did not receive return calls. Other partners stated they received their ballots only 1-2 days before they were due back at the Region. Ultimately, three voters told Starbucks that they planned to drive from Rochester to the Buffalo Regional office, three-hours round-trip, to cast their

ballots in the Regional office on the morning of the count, because they had not received their ballots with sufficient time to return them by mail. These voters did make this drive, and their votes were counted. A fourth voter told Starbucks that they received their ballot on the date prior to the count but were unable to drive to Buffalo to vote. Starbucks believes numerous other eligible voters failed to timely receive their ballots because of Region 3's misconduct.

At the April 7, 2022 ballot count, the Region counted 24 ballots out of 41 eligible voters and deemed two ballots void. 15 ballots are unaccounted for. Of the 24 votes that were counted, 13 were for Workers United representation and 11 were against Workers United representation.

During the count, Region 3 voided a partner's ballot because it was missing the interior blue envelope. There was no indication that there were any other issues with the ballot (timeliness, signature, stray marks, etc.) that would have caused the ballot to be voided, but for this claimed deficiency. Neither party saw nor could have seen the voter's ballot so as to deprive the voter of their right to a secret ballot vote. Region 3's decision to void this ballot was inconsistent with how other Regions handle missing interior envelopes. For instance, on April 11, 2022, Region 1 counted a ballot cast by a voter who returned it without using the interior blue envelope in Case 01-RC-287639 (Coolidge Corner), another petition filed by Workers United to represent partners at a Starbucks store.

Region 3 also voided a voter's ballot because the Region determined that their signature was "printed" on the flap, rather than "signed." Again, there was no indication that there was any other issue with the ballot (timeliness, stray marks, etc.), that would have caused the voter's ballot to be voided but for this claimed deficiency. Region 3's decision to void this ballot disenfranchised the voter, ignored that some individuals "sign" their names in print, and that there are various reasons why a voter may not know how to or be able to use cursive, including cultural reasons and

due to disability. Further, nothing in the NLRB's instructions indicates that a signature must be written fully in cursive handwriting with all letters connected in order to be counted. Here, the voter's signature adequately recorded their intent to vote, and their vote should have been counted.

Since August 2021, Starbucks has been involved in numerous representation cases including other cases handled by Region 3. In Case 03-RC-285929, on March 16, 2022, Starbucks filed a post-election objection to Region 3's conducting of the election because numerous eligible voters claimed that they had timely cast their ballots, but their ballots were neither counted nor accounted for during the ballot count. Investigation of the Employer's objection was transferred to Region 10. On April 12, 2022, Region 10 informed the parties that its administrative investigation found that Region 3 engaged in misconduct by failing to count seven valid ballots in its possession – without giving a reason for this failure – in an election where Workers United prevailed by an 8 to 7 tally. Region 3's misconduct in Case 03-RC-285929 casts doubt on whether all valid ballots were counted in that case, and further casts doubt on whether other valid ballots were received and not counted/or accounted for by Region 3 in the instant matter. Moreover, Region 3's misconduct – including the absence of any explanation as to why the seven valid ballots were not counted – undermines confidence in Region 3's election integrity.

Herein, Region 3's conduct of the election deprived Starbucks' partners of their Section 7 rights to vote on the issue of union representation.

Region 3's objectionable conduct includes the following:

OBJECTION 1

Region 3 personnel engaged in election misconduct by failing to timely deliver ballots to eligible voters.

OBJECTION 2

Region 3 personnel engaged in election misconduct by voiding a ballot that was missing the blue interior envelope.

OBJECTION 3

Region 3 personnel engaged in election misconduct by voiding a ballot on the basis that the signature was “printed,” claiming that the signed name did not constitute a signature.

OBJECTION 4

Region 3 personnel’s actions in their handling of the ballot count in Case 03-RC-285929 casts doubt on whether all valid ballots were counted in the instant matter, and undermines election integrity and confidence.

* * *

Based upon the foregoing Objections, the Employer respectfully requests that these objections are transferred to another Regional office for investigation. Such investigation will warrant that the election results must be set aside and a re-run election conducted. If the Regional Director does not administratively order a re-run election, the Employer requests a hearing in which to present documentary evidence and witness testimony in support of its Objections.

Respectfully submitted,

/s/ Alan I. Model
Alan I. Model
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Attorneys for the Employer
Attorneys for Starbucks Corporation

CERTIFICATE OF SERVICE

I certify that Starbucks Corporation's Objections to Conduct of the Election in Case No. 03-RC-289801 was electronically filed on April 14, 2022, through the Board's website and also served via email on the following:

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/s/ Alan Model
Alan I. Model
Littler Mendelson, P.C.
Attorneys for Starbucks Corporation


UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
RC PETITION

DO NOT WRITE IN THIS SPACE

Case No.
3-RC-289802Date Filed
2/1/2022

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlrb.gov/, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. **The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.**

2a. Name of Employer: Starbucks Corporation		2b. Address(es) of Establishment(s) involved (Street and number, City, State, ZIP code): 2750 Monroe Ave. Rochester, NY 14618	
3a. Employer Representative - Name and Title: Kevin Johnson, President and CEO (see attached for Brittany Cahill)		3b. Address (if same as 2b - state same): 2401 Utah Avenue South, Suite 80 Seattle, WA 98134	
3c. Tel. No. 206-318-2212	3d. Cell No.	3e. Fax No.	3f. E-Mail Address kevin.johnson@starbucks.com
4a. Type of Establishment (Factory, mine, wholesaler, etc.) Coffee shop		4b. Principal Product or Service Food and beverage	5a. City and State where unit is located: Rochester, NY
5b. Description of Unit Involved: Included: All full-time and regular part-time Baristas, Shift Supervisors, Asst. Store Managers Excluded: Store Managers; office clericals, guards, and supervisors as defined by the Act			6a. Number of Employees in Unit: 30 6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Check One: <input type="checkbox"/> 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (If no reply received, so state). <input type="checkbox"/> 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.			
8a. Name of Recognized or Certified Bargaining Agent (If none, so state) None		8b. Address:	
8c. Tel. No.	8d. Cell No.	8e. Fax No.	8f. E-Mail Address
8g. Affiliation, if any:		8h. Date of Recognition or Certification	8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)
9. Is there now a strike or picketing at the Employer's establishment(s) involved? <u>No</u> If so, approximately how many employees are participating? _____ (Name of Labor Organization) _____, has picketed the Employer since (Month, Day, Year) _____			
10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state) None			
10a. Name		10b. Address	10c. Tel. No. 10d. Cell No. 10e. Fax No. 10f. E-Mail Address
11. Election Details: If the NLRB conducts and election in this matter, state your position with respect to any such election:			11a. Election Type: <input type="checkbox"/> Manual <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail
11b. Election Date(s): 2/21/22		11c. Election Time(s): N/A	11d. Election Location(s): N/A
12a. Full Name of Petitioner (including local name and number): Workers United		12b. Address (street and number, city, State and ZIP code): 2954 Main Street, Suite 556 Buffalo, NY 14214	
12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state): Workers United, a/w SEIU			
12d. Tel. No. 585-473-3280	12e. Cell No.	12f. Fax No.	(b) (6), (b) (7)(C)@trjb.org
13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.			
13a. Name and Title: Ian Hayes, Attorney		13b. Address (street and number, city, State and ZIP code): Hayes Dolce 471 Voorhees Ave., Buffalo, NY 14216	
13c. Tel. No. 716-608-3427	13d. Cell No.	13e. Fax No.	13f. E-Mail Address ihayes@hayesdolce.com
I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.			
Name (Print) Ian Hayes		Signature 	Title Attorney Date 01/31/22

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

Attachment to RC Petition

Section 3- Employer Representative

Brittany Cahill
District Manager
bcahill@starbucks.com



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 3
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

Agency Website: www.nlrb.gov
Telephone: (716)551-4931
Fax: (716)551-4972



Download
NLRB
Mobile App

February 1, 2022

URGENT

Workers United
2954 Main Street, Suite 556
Buffalo, NY 14214

Re: Starbucks Corporation
Case 03-RC-289802

Dear Sir or Madam:

The enclosed petition that you filed with the National Labor Relations Board (NLRB) has been assigned the above case number. This letter tells you how to contact the Board agent who will be handling this matter; explains your obligation to provide the originals of the showing of interest and the requirement that you complete and serve a Responsive Statement of Position form in response to each timely filed and served Statement(s) of Position; notifies you of a hearing; describes the employer's obligation to post and distribute a Notice of Petition for Election, complete a Statement of Position and provide a voter list; requests that you provide certain information; notifies you of your right to be represented; and discusses some of our procedures including how to submit documents to the NLRB.

Investigator: This petition will be investigated by Field Examiner THOMAS A. MILLER whose telephone number is (716)398-7004. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. The Board agent may also contact you and the other party or parties to schedule a conference meeting or telephonic or video conference for some time before the close of business the day following receipt of the final Responsive Statement(s) of Position. This will give the parties sufficient time to determine if any issues can be resolved prior to hearing or if a hearing is necessary. If the agent is not available, you may contact Regional Director LINDA M. LESLIE whose telephone number is (716)398-7017. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

Showing of Interest: If the Showing of Interest you provided in support of your petition was submitted electronically or by fax, the original documents which constitute the Showing of Interest containing handwritten signatures must be delivered to the Regional office within **2 business days**. If the originals are not received within that time the Region will dismiss your petition.

Notice of Hearing: Enclosed is a Notice of Representation Hearing to be conducted at **10:00 a.m. on Tuesday, February 22, 2022** at **via a videoconference call**, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive

days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, we will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party showing good cause, the regional director may postpone the hearing. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Posting and Distribution of Notice: The Employer must post the enclosed Notice of Petition for Election by February 8, 2022 in conspicuous places, including all places where notices to employees are customarily posted. If it customarily communicates electronically with its employees in the petitioned-for unit, it must also distribute the notice electronically to them. The Employer must maintain the posting until the petition is dismissed or withdrawn or this notice is replaced by the Notice of Election. Failure to post or distribute the notice may be grounds for setting aside the election if proper and timely objections are filed.

Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, the Employer is required to complete the enclosed Statement of Position form, have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition by **noon Eastern Time on February 11, 2022**. The Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the Employer contends that the proposed unit is inappropriate, it must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The Employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit.

Required Responsive Statement of Position (RSOP): In accordance with Section 102.63(b) of the Board's Rules, following timely filing and service of a Statement of Position, the petitioner is required to complete the enclosed Responsive Statement of Position form addressing issues raised in any Statement(s) of Position. The petitioner must file a complete, signed RSOP in response to all other parties' timely filed and served Statement of Position, with all required attachments, with this office and serve it on all parties named in the petition such that it is received by them by **noon Eastern Time on February 16, 2022**. This form solicits information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. **This form must be e-Filed, but unlike other e-Filed documents, will not be timely if filed on the due date but after noon Eastern Time.** If you have questions about this form or would like assistance in filling out this form, please contact the Board agent named above.

Failure to Supply Information: Failure to supply the information requested by the RSOP form may preclude you from litigating issues under Section 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§ 102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Voter List: If an election is held in this matter, the Employer must transmit to this office and to the other parties to the election, an alphabetized list of the full names and addresses of all eligible voters, including their shifts, job classifications, work locations, and other contact information including available personal email addresses and available personal home and cellular telephone numbers. Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. The list must be electronically filed with the Region and served electronically on the other parties. To guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the Employer must file the voter list with the Regional Office. However, a petitioner and/or union entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483, which is available on the NLRB's website or from an NLRB office. A waiver will not be effective unless all parties who are entitled to the voter list agree to waive the same number of days.

Information Needed Now: Please submit to this office, as soon as possible, the following information needed to handle this matter:

- (a) The correct name of the Union as stated in its constitution or bylaws.
- (b) A copy of any existing or recently expired collective-bargaining agreements, and any amendments or extensions, or any recognition agreements covering any employees in the petitioned-for unit.
- (c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.
- (d) The name and contact information for any other labor organization (union) claiming to represent or have an interest in any of the employees in the petitioned-for unit and for any employer who may be a joint employer of the employees in the proposed unit. Failure to disclose the existence of an interested party may delay the processing of the petition.

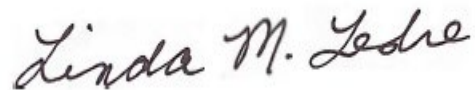
Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before the NLRB. In view of our policy of processing these cases expeditiously, if you wish to be represented, you should obtain representation promptly. Your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any “inside knowledge” or favored relationship with the NLRB. Their knowledge regarding this matter was obtained only through access to information that must be made available to any member of the public under the Freedom of Information Act.

Procedures: Pursuant to Section 102.5 of the Board’s Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency’s web site (www.nlr.gov). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determinations solely based on the documents and evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the petition.

Information about the NLRB and our customer service standards is available on our website, www.nlr.gov, or from an NLRB office upon your request. We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in dark ink that reads "Linda M. Leslie". The signature is written in a cursive, flowing style.

LINDA M. LESLIE
Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)
6. Responsive Statement of Position (Form 506)

cc: Ian Hayes, Attorney at Law
Hayes Dolce
471 Voorhees Avenue
Buffalo, NY 14216



National Labor Relations Board



NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that Workers United has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 03-RC-289802 seeking an election to become certified as the representative of the employees of Starbucks Corporation in the unit set forth below:

All full-time and regular part-time Baristas, Shift Supervisors, Asst. Store Managers. Excluded: Store Managers; office clericals, guards, and supervisors as defined by the Act.

This notice also provides you with information about your basic rights under the National Labor Relations Act, the processing of the petition, and rules to keep NLRB elections fair and honest.

YOU HAVE THE RIGHT under Federal Law

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of your own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustments).

PROCESSING THIS PETITION

Elections do not necessarily occur in all cases after a petition is filed. **NO FINAL DECISIONS HAVE BEEN MADE YET** regarding the appropriateness of the proposed unit or whether an election will be held in this matter. If appropriate, the NLRB will first see if the parties will enter into an election agreement that specifies the method, date, time, and location of an election and the unit of employees eligible to vote. If the parties do not enter into an election agreement, usually a hearing is held to receive evidence on the appropriateness of the unit and other issues in dispute. After a hearing, an election may be directed by the NLRB, if appropriate.

IF AN ELECTION IS HELD, it will be conducted by the NLRB by secret ballot and Notices of Election will be posted before the election giving complete details for voting.

ELECTION RULES

The NLRB applies rules that are intended to keep its elections fair and honest and that result in a free choice. If agents of any party act in such a way as to interfere with your right to a free election, the election can be set aside by the NLRB. Where appropriate the NLRB provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with employees' rights and may result in setting aside the election:

- Threatening loss of jobs or benefits by an employer or a union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or, if the election is conducted by mail, from the time and date the ballots are scheduled to be sent out by the Region until the time and date set for their return
- Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a union or an employer to influence their votes

Please be assured that IF AN ELECTION IS HELD, every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with the NLRB in maintaining basic principles of a fair election as required by law. The NLRB as an agency of the United States Government does not endorse any choice in the election.

For additional information about the processing of petitions, go to www.nlr.gov or contact the NLRB at (716)551-4931.

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED BY ANYONE. IT MUST REMAIN POSTED WITH ALL PAGES SIMULTANEOUSLY VISIBLE UNTIL REPLACED BY THE NOTICE OF ELECTION OR THE PETITION IS DISMISSED OR WITHDRAWN.



National Labor Relations Board





**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3**



Starbucks Corporation Employer and Workers United Petitioner	Case 03-RC-289802
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NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 10:00 a.m. on **Tuesday, February 22, 2022** and on consecutive days thereafter until concluded, at the National Labor Relations Board offices located via a videoconference call, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Starbucks Corporation must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **noon** Eastern time on February 11, 2022. Following timely filing and service of a Statement of Position by Starbucks Corporation, the Petitioner must complete its Responsive Statement of Position(s) responding to the issues raised in the Employer's and/or Union's Statement of Position and file them and all attachments with the Regional Director and serve them on the parties named in the petition such they are received by them no later than **noon** Eastern on February 16, 2022.

Pursuant to Section 102.5 of the Board's Rules and Regulations, all documents filed in cases before the Agency must be filed by electronically submitting (E-Filing) through the Agency's website (www.nlrb.gov), unless the party filing the document does not have access to the means for filing electronically or filing electronically would impose an undue burden. Documents filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#)

The Statement of Position and Responsive Statement of Position must be E-Filed but, unlike other E-Filed documents, must be filed by **noon** Eastern on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position and Responsive Statement of Position are not required to be filed. If an election agreement is signed by all parties and returned to the Regional office after the due date of the Statement of Position but before the due date of the Responsive Statement of Position, the Responsive Statement of Position is not required to be filed.

Dated: February 1, 2022

/s/Linda M. Leslie

LINDA M. LESLIE
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 03
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

Starbucks Corporation Employer and Workers United Petitioner	Case 03-RC-289802
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AFFIDAVIT OF SERVICE OF: Petition dated February 1, 2022, Notice of Representation Hearing dated February 1, 2022, Description of Procedures in Certification and Decertification Cases (Form NLRB-4812), Notice of Petition for Election, and Statement of Position Form (Form NLRB-505).

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on February 1, 2022, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

Alan I. Model, Attorney at Law
Littler Mendelson, PC
One Newark Center
8th Floor
Newark, NJ 07102-5235
amodel@littler.com
Fax: (973)755-0439

Brittany Cahill, District Manager
Starbucks Corporation
2750 Monroe Ave.
Rochester, NY 14618
bcahill@starbucks.com

Kevin Johnson, President and CEO
Starbucks Corporation
2401 Utah Avenue South, Suite 800
Seattle, WA 98134
kevin.johnson@starbucks.com

Ian Hayes, Attorney at Law
Hayes Dolce
471 Voorhees Avenue
Buffalo, NY 14216
ihayes@hayesdolce.com

Workers United
2954 Main Street, Suite 556
Buffalo, NY 14214

February 1, 2022

Date

Andrea Seyfried, Designated Agent of NLRB

Name

/s/ Andrea Seyfried

Signature

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

**DESCRIPTION OF REPRESENTATION CASE PROCEDURES
IN CERTIFICATION AND DECERTIFICATION CASES**

The National Labor Relations Act grants employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity. A party may file an RC, RD or RM petition with the National Labor Relations Board (NLRB) to conduct a secret ballot election to determine whether a representative will represent, or continue to represent, a unit of employees. An **RC** petition is generally filed by a union that desires to be certified as the bargaining representative. An **RD** petition is filed by employees who seek to remove the currently recognized union as the bargaining representative. An **RM** petition is filed by an employer who seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status. This form generally describes representation case procedures in RC, RD and RM cases, also referred to as certification and decertification cases.

Right to be Represented – Any party to a case with the NLRB has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at www.nlr.gov or forward it to the NLRB Regional Office handling the petition as soon as possible.

Filing and Service of Petition – A party filing an RC, RD or RM petition is required to serve a copy of its petition on the parties named in the petition along with this form and the Statement of Position form. The petitioner files the petition with the NLRB, together with (1) a certificate showing service of these documents on the other parties named in the petition, and (2) a showing of interest to support the petition. The showing of interest is not served on the other parties.

Notice of Hearing – After a petition in a certification or decertification case is filed with the NLRB, the NLRB reviews the petition, certificate of service, and the required showing of interest for sufficiency, assigns the petition a case number, and promptly sends letters to the parties notifying them of the Board agent who will be handling the case. In most cases, the letters include a Notice of Representation Hearing. Except in cases presenting unusually complex issues, this pre-election hearing is set for a date 14 business days (excluding weekends and federal holidays) from the date of service of the notice of hearing. Once the hearing begins, it will continue day to day until completed absent extraordinary circumstances. The Notice of Representation Hearing also sets the due date for filing and serving the Statement(s) of Position and the Responsive Statement of Position(s). Included with the Notice of Representation Hearing are the following: (1) copy of the petition, (2) this form, (3) Statement of Position for non-petitioning parties, (4) petitioner's Responsive Statement of Position, (5) Notice of Petition for Election, and (6) letter advising how to contact the Board agent who will be handling the case and discussing those documents.

Hearing Postponement: Requests to postpone the hearing are not routinely granted, but the regional director may postpone the hearing for good cause. A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should include the positions of the other parties regarding the postponement. The request must be filed electronically ("E-Filed") on the Agency's website (www.nlr.gov) by following the instructions on the website. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Statement of Position Form and List(s) of Employees – The Statement of Position form solicits commerce and other information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. In an **RC** or **RD** case, as part of its Statement of Position form, the employer also provides a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional

form for the list is provided on the NLRB website at www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx

Ordinarily the Statement of Position must be filed with the Regional Office and served on the other parties such that it is received by them by noon 8 business days from the issuance of the Notice of Hearing. The regional director may postpone the due date for filing and serving the Statement of Position for good cause. The Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Responsive Statement of Position – Petitioner's Responsive Statement(s) of Position solicits a response to the Statement(s) of Position filed by the other parties and further facilitates entry into election agreements or streamlines the preelection hearing. A petitioner must file a Responsive Statement of Position in response to each party's Statement of Position addressing each issue in each Statement of Position(s), if desired. In the case of an RM petition, the employer-petitioner must also provide commerce information and file and serve a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. Ordinarily, the Responsive Statement of Position must be electronically filed with the Regional Office and served on the other parties such that it is received by noon 3 business days prior to the hearing. The regional director may postpone the due date for filing and serving the Responsive Statement of Position for good cause. The Responsive Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Responsive Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Responsive Statement of Position due date. If a party wishes to request both a postponement of the hearing and a Postponement of the Responsive Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Posting and Distribution of Notice of Petition for Election – Within 5 business days after service of the notice of hearing, the employer must post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and must also distribute it electronically to the employees in the petitioned-for unit if the employer customarily communicates with these employees electronically. The employer must maintain the posting until the petition is dismissed or withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election if proper and timely objections are filed.

Election Agreements – Elections can occur either by agreement of the parties or by direction of the regional director or the Board. Three types of agreements are available: (1) a Consent Election Agreement (Form NLRB-651); (2) a Stipulated Election Agreement (Form NLRB-652); and (3) a Full Consent Agreement (Form NLRB-5509). In the Consent Election Agreement and the Stipulated Election Agreement, the parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent. In the Consent Agreement, the parties also agree that post-election matters (election objections or determinative challenged ballots) will be resolved with finality by the regional director; whereas in the Stipulated Election Agreement, the parties agree that they may request Board review of the regional director's post-election determinations. A Full Consent Agreement provides that the regional director will make final determinations regarding all pre-election and post-election issues.

Hearing Cancellation Based on Agreement of the Parties – The issuance of the Notice of Representation Hearing does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments and the Board agent assigned to the case will work with the parties to enter into an election agreement, so the parties can avoid the time and expense of participating in a hearing.

Hearing – A hearing will be held unless the parties enter into an election agreement approved by the regional director or the petition is dismissed or withdrawn.

Purpose of Hearing: The primary purpose of a pre-election hearing is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit

appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which a labor organization has been certified or is being currently recognized by the employer as the bargaining representative.

Issues at Hearing: Issues that might be litigated at the pre-election hearing include: jurisdiction; labor organization status; bars to elections; unit appropriateness; expanding and contracting unit issues; inclusion of professional employees with nonprofessional employees; seasonal operation; potential mixed guard/non-guard unit; and eligibility formulas. At the hearing, the timely filed Statement of Position and Responsive Statement of Position(s) will be received into evidence. The hearing officer will not receive evidence concerning any issue as to which the parties have not taken adverse positions, except for evidence regarding the Board's jurisdiction over the employer and evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

Preclusion: At the hearing, a party will be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or Responsive Statement of Position(s) or to place in dispute in timely response to another party's Statement of Position or response, except that no party will be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. As set forth in §102.66(d) of the Board's rules, if the employer fails to timely furnish the lists of employees, the employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Conduct of Hearing: If held, the hearing is usually open to the public and will be conducted by a hearing officer of the NLRB. Any party has the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer also has the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses will be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Parties appearing at any hearing who have or whose witnesses have disabilities falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the regional director as soon as possible and request the necessary assistance.

Official Record: An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (Copies of exhibits should be supplied to the hearing officer and other parties at the time the exhibit is offered in evidence.) All statements made at the hearing will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the regional director.

Motions and Objections: All motions must be in writing unless stated orally on the record at the hearing and must briefly state the relief sought and the grounds for the motion. A copy of any motion must be served immediately on the other parties to the proceeding. Motions made during the hearing are filed with the hearing officer. All other motions are filed with the regional director, except that motions made after the transfer of the record to the Board are filed with the Board. If not E-Filed, an original and two copies of written motions shall be filed. Statements of reasons in support of motions or objections should be as concise as possible. Objections shall not be deemed waived by further participation in the hearing. On appropriate request, objections may be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

Election Details: Prior to the close of the hearing the hearing officer will: (1) solicit the parties' positions (but will not permit litigation) on the type, date(s), time(s), and location(s) of the election and the eligibility period; (2) solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election if an election is directed; (3) inform the parties that the regional director will issue a decision as soon as practicable and will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and (4) inform the parties of their obligations if the director directs an election and of the time for complying with those obligations.

Oral Argument and Briefs: Upon request, any party is entitled to a reasonable period at the close of the hearing for oral argument, which will be included in the official transcript of the hearing. At any time before the close of the hearing, any party may file a memorandum addressing relevant issues or points of law. Post-hearing briefs shall be due within 5 business days of the close of the hearing. The hearing officer may allow up to 10 additional business days for such briefs prior to the close of hearing and for good cause. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the regional director. Briefs including electronic documents, filed with the Regional Director must be formatted as double-spaced in an 8½ by 11 inch format and must be e-filed through the Board's website, www.nlr.gov.

Regional Director Decision - After the hearing, the regional director issues a decision directing an election, dismissing the petition or reopening the hearing. A request for review of the regional director's pre-election decision may be filed with the Board at any time after issuance of the decision until 10 business days after a final disposition of the proceeding by the regional director. Accordingly, a party need not file a request for review before the election in order to preserve its right to contest that decision after the election. Instead, a party can wait to see whether the election results have mooted the basis of an appeal. The Board will grant a request for review only where compelling reasons exist therefor.

Voter List – The employer must provide to the regional director and the parties named in the election agreement or direction of election a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular ("cell") telephone numbers) of all eligible voters. (In construction industry elections, unless the parties stipulate to the contrary, also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.) The employer must also include in a separate section of the voter list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge. The list of names must be alphabetized (overall or by department) and be in the same Microsoft Word file (or Microsoft Word compatible file) format as the initial lists provided with the Statement of Position form unless the parties agree to a different format or the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list must be filed electronically with the regional director and served electronically on the other parties named in the agreement or direction. To be timely filed and served, the voter list must be received by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction of elections unless a longer time is specified in the agreement or direction. A certificate of service on all parties must be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

Waiver of Time to Use Voter List – Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 calendar days after the date when the employer must file the voter list with the Regional Office. However, the parties entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.

Election – Information about the election, requirements to post and distribute the Notice of Election, and possible proceedings after the election is available from the Regional Office and will be provided to the parties when the Notice of Election is sent to the parties.

Withdrawal or Dismissal – If it is determined that the NLRB does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the regional director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A STATEMENT OF POSITION FORM

Completing and Filing this Form: The Notice of Hearing indicates which parties are responsible for completing the form. If you are required to complete the form, you must have it signed by an authorized representative and file a completed copy (including all attachments) with the RD and serve copies on all parties named in the petition by the date and time established for its submission. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must EFile your Statement of Position at www.nlrb.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed.**

Note: Non-employer parties who complete this Statement of Position are NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7.

Required Lists: The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx).

Consequences of Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
STATEMENT OF POSITION

DO NOT WRITE IN THIS SPACE

Case No.
03-RC-289802

Date Filed
February 1, 2022

INSTRUCTIONS: Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.

Note: Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7.

1a. Full name of party filing Statement of Position		1c. Business Phone:	1e. Fax No.:
1b. Address (Street and number, city, state, and ZIP code)		1d. Cell No.:	1f. e-Mail Address
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)			
3. Do you agree that the proposed unit is appropriate? <input type="checkbox"/> Yes <input type="checkbox"/> No (If not, answer 3a and 3b)			
a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards)			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.			
Added		Excluded	
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.			
5. Is there a bar to conducting an election in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, state the basis for your position.			
6. Describe all other issues you intend to raise at the pre-election hearing.			
7. The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx . (a) A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) (b) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be <i>added</i> to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be <i>excluded</i> from the proposed unit to make it an appropriate unit. (Attachment D)			
8a. State your position with respect to the details of any election that may be conducted in this matter. Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
8b. Date(s)	8c. Time(s)	8d. Location(s)	
8e. Eligibility Period (e.g. special eligibility formula)	8f. Last Payroll Period Ending Date	8g. Length of payroll period <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)	
9. Representative who will accept service of all papers for purposes of the representation proceeding			
9a. Full name and title of authorized representative	9b. Signature of authorized representative		9c. Date
9d. Address (Street and number, city, state, and ZIP code)			9e. e-Mail Address
9f. Business Phone No.:		9g. Fax No.	9h. Cell No.

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME

CASE NUMBER
03-RC-289802

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)

3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).

7A. PRINCIPAL LOCATION:

7B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. TOTAL:

B. AT THE ADDRESS INVOLVED IN THIS MATTER:

9. DURING THE MOST RECENT (Check the appropriate box): ☐ CALENDAR ☐ 12 MONTHS or ☐ FISCAL YEAR (FY DATES _____)

YES

NO

A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.
\$ _____

B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$ _____

C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$ _____

D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$ _____

E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____

F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____

G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$ _____

H. Gross Revenues from all sales or performance of services (Check the largest amount)

☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.

I. Did you begin operations within the last 12 months? If yes, specify date: _____

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

☐ YES ☐ NO (If yes, name and address of association or group).

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A RESPONSIVE STATEMENT OF POSITION FORM

Completing and Filing this Form: For **RC and RD petitions**, the Petitioner is required to complete this form in response to each timely filed and served Statement of Position filed by another party. For **RM petitions**, the Employer-Petitioner must complete a Responsive Statement of Position form and submit the list described below. In accordance with Section 102.63(b) of the Board's Rules, if you are required to complete the form, you must have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition responding to the issues raised in another party's Statement of Position, such that it is received no later than noon three business days before the date of the hearing. A separate form must be completed for each timely filed and properly served Statement of Position you receive. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must E-File your Responsive Statement of Position at www.NLRB.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed. Note that if you are completing this form as a PDF downloaded from www.NLRB.gov, the form will lock upon signature and no further editing may be made.**

Required List: In addition to responding to the issues raised in another party's Statement of Position, if any, the Employer-Petitioner in an RM case is required to file and serve on the parties a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. This list must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the list in the required form, the list must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx

Consequences of Failure to Submit a Responsive Statement of Position: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
RESPONSIVE STATEMENT OF POSITION – RC, RD or RM PETITION

DO NOT WRITE IN THIS SPACE

Case No.
03-RC-289802

Date Filed
February 1, 2022

INSTRUCTIONS: If a party has submitted and served on you a timely Statement of Position to an RC, RD or RM petition, the Petitioner must submit this Responsive Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and any attachments on each party named in the petition in this case such that it is received by noon local time, three business days prior to the hearing date specified in the Notice of Hearing. A separate form must be completed for each timely filed and properly served Statement of Position received by the Petitioner. The Petitioner-Employer in a RM case is required to file this Responsive Statement of Position and include an appropriate employee list without regard to whether another party has filed a Statement of Position.

This Responsive Statement of Position is filed by the Petitioner in response to a Statement of Position received from the following party:

The Employer

An Intervenor/Union

1a. Full Name of Party Filing Responsive Statement of Position

1c. Business Phone

1d. Cell No.

1e. Fax No.

1f. E-Mail Address

1b. Address (Street and Number, City, State, and ZIP Code)

2. Identify all issues raised in the other party's Statement of Position that you dispute and describe the basis of your dispute:

a. EMPLOYER NAME/IDENTITY [Box 1a of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

b. JURISDICTION [Box 2 of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

c. APPROPRIATENESS OF UNIT [Boxes 3, 3a and 3b of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

d. INDIVIDUAL ELIGIBILITY [Box 4 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

e. BARS TO ELECTION [Box 5 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

f. ALL OTHER ISSUES [Box 6 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

g. ELECTION DETAILS [Boxes 8a, 8b, 8c, 8d, 8e, 8f, and 8g of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

Full Name and Title of Authorized Representative

Signature of Authorized Representative

Date

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

Please fill all necessary fields on the form PRIOR to digitally signing. To make changes after the form has been signed, right-click on the signature field and click "clear signature." Once complete, please sign the form.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 3
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

Agency Website: www.nlr.gov
Telephone: (716)551-4931
Fax: (716)551-4972



Download
NLRB
Mobile App

February 1, 2022

URGENT

Brittany Cahill, District Manager
Starbucks Corporation
2750 Monroe Ave.
Rochester, NY 14618

Re: Starbucks Corporation
Case 03-RC-289802

Dear Ms. Cahill:

Enclosed is a copy of a petition that filed with the National Labor Relations Board (NLRB) seeking to represent certain of your employees. After a petition is filed, the employer is required to promptly take certain actions so please read this letter carefully to make sure you are aware of the employer's obligations. This letter tells you how to contact the Board agent who will be handling this matter, about the requirement to post and distribute the Notice of Petition for Election, the requirement to complete and serve a Statement of Position Form, the Petitioner's requirement to complete and serve a Responsive Statement of Position Form, a scheduled hearing in this matter, other information needed including a voter list, your right to be represented, and NLRB procedures, including how to submit documents to the NLRB.

Investigator: This petition will be investigated by Field Examiner THOMAS A. MILLER whose telephone number is (716)398-7004. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. If the agent is not available, you may contact Regional Director LINDA M. LESLIE whose telephone number is (716)398-7017. The Board agent may also contact you and the other party or parties to schedule a conference meeting or telephonic or video conference for some time before the close of business the day following receipt of the final Responsive Statement(s) of Position. This will give the parties sufficient time to determine if any issues can be resolved prior to hearing or if a hearing is necessary. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

Required Posting and Distribution of Notice: You must post the enclosed Notice of Petition for Election by February 8, 2022 in conspicuous places, including all places where notices to employees are customarily posted. The Notice of Petition for Election must be posted so all pages are simultaneously visible. If you customarily communicate electronically with employees in the petitioned-for unit, you must also distribute the notice electronically to them. You must maintain the posting until the petition is dismissed or withdrawn or this notice is replaced by the Notice of Election. Posting and distribution of the Notice of Petition for Election

will inform the employees whose representation is at issue and the employer of their rights and obligations under the National Labor Relations Act in the representation context. Failure to post or distribute the notice may be grounds for setting aside an election if proper and timely objections are filed.

Required Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, the employer is required to complete the enclosed Statement of Position form (including the attached Commerce Questionnaire), have it signed by an authorized representative, and file a completed copy (with all required attachments) with this office and serve it on all parties named in the petition such that it is received by them by **noon Eastern Time on February 11, 2022**. This form solicits information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. **This form must be e-Filed, but unlike other e-Filed documents, will *not* be timely if filed on the due date but after noon February 11, 2022.** If you have questions about this form or would like assistance in filling out this form, please contact the Board agent named above.

List(s) of Employees: The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx)

Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under Section 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing,

from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§ 102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Responsive Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, following timely filing and service of an employer's Statement of Position, the petitioner is required to complete the enclosed Responsive Statement of Position form, have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition responding to the issues raised in the employer's Statement of Position, such that it is received no later than **noon Eastern Time on February 16, 2022**.

Notice of Hearing: Enclosed is a Notice of Representation Hearing to be conducted at **10:00 a.m. on Tuesday, February 22, 2022 via a videoconference call**, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, the NLRB will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party showing good cause, the regional director may postpone the hearing. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Other Information Needed Now: Please submit to this office, as soon as possible, the following information needed to handle this matter:

- (a) A copy of any existing or recently expired collective-bargaining agreements, and any amendments or extensions, or any recognition agreements covering any of your employees in the unit involved in the petition (the petitioned-for unit);

- (b) The name and contact information for any other labor organization (union) claiming to represent any of the employees in the petitioned-for unit;
- (c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.
- (d) If you desire a formal check of the showing of interest, you must provide an alphabetized payroll list of employees in the petitioned-for unit, with their job classifications, for the payroll period immediately before the date of this petition. Such a payroll list should be submitted as early as possible prior to the hearing. Ordinarily a formal check of the showing of interest is not performed using the employee list submitted as part of the Statement of Position.

Voter List: If an election is held in this matter, the employer must transmit to this office and to the other parties to the election, an alphabetized list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular telephone numbers) of eligible voters. Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. I am advising you of this requirement now, so that you will have ample time to prepare this list. The list must be electronically filed with the Region and served electronically on the other parties. To guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlr.gov, or at the Regional office upon your request.

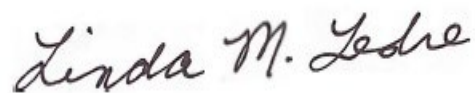
If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any “inside knowledge” or favored relationship with the NLRB. Their knowledge regarding this matter was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Procedures: Pursuant to Section 102.5 of the Board’s Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency’s web site (www.nlr.gov). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determinations solely based on the documents and evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native

format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the petition.

Information about the NLRB and our customer service standards is available on our website, www.nlr.gov, or from an NLRB office upon your request. We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in dark ink that reads "Linda M. Leslie". The signature is written in a cursive, flowing style.

LINDA M. LESLIE
Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)
6. Responsive Statement of Position (Form 506)

cc: Kevin Johnson, President and CEO
Starbucks Corporation
2401 Utah Avenue South, Suite 800
Seattle, WA 98134

Alan I. Model, Attorney at Law
Littler Mendelson, PC
One Newark Center
8th Floor
Newark, NJ 07102-5235



National Labor Relations Board



NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 03-RC-289802 seeking an election to become certified as the representative of the employees of Starbucks Corporation in the unit set forth below:

All full-time and regular part-time Baristas, Shift Supervisors, Asst. Store Managers. Excluded: Store Managers; office clericals, guards, and supervisors as defined by the Act.

This notice also provides you with information about your basic rights under the National Labor Relations Act, the processing of the petition, and rules to keep NLRB elections fair and honest.

YOU HAVE THE RIGHT under Federal Law

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of your own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustments).

PROCESSING THIS PETITION

Elections do not necessarily occur in all cases after a petition is filed. **NO FINAL DECISIONS HAVE BEEN MADE YET** regarding the appropriateness of the proposed unit or whether an election will be held in this matter. If appropriate, the NLRB will first see if the parties will enter into an election agreement that specifies the method, date, time, and location of an election and the unit of employees eligible to vote. If the parties do not enter into an election agreement, usually a hearing is held to receive evidence on the appropriateness of the unit and other issues in dispute. After a hearing, an election may be directed by the NLRB, if appropriate.

IF AN ELECTION IS HELD, it will be conducted by the NLRB by secret ballot and Notices of Election will be posted before the election giving complete details for voting.

ELECTION RULES

The NLRB applies rules that are intended to keep its elections fair and honest and that result in a free choice. If agents of any party act in such a way as to interfere with your right to a free election, the election can be set aside by the NLRB. Where appropriate the NLRB provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with employees' rights and may result in setting aside the election:

- Threatening loss of jobs or benefits by an employer or a union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or, if the election is conducted by mail, from the time and date the ballots are scheduled to be sent out by the Region until the time and date set for their return
- Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a union or an employer to influence their votes

Please be assured that IF AN ELECTION IS HELD, every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with the NLRB in maintaining basic principles of a fair election as required by law. The NLRB as an agency of the United States Government does not endorse any choice in the election.

For additional information about the processing of petitions, go to www.nlr.gov or contact the NLRB at (716)551-4931.

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED BY ANYONE. IT MUST REMAIN POSTED WITH ALL PAGES SIMULTANEOUSLY VISIBLE UNTIL REPLACED BY THE NOTICE OF ELECTION OR THE PETITION IS DISMISSED OR WITHDRAWN.



National Labor Relations Board





**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3**



Starbucks Corporation Employer and Petitioner	Case 03-RC-289802
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NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 10:00 a.m. on **Tuesday, February 22, 2022** and on consecutive days thereafter until concluded, at the National Labor Relations Board offices located via a videoconference call, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Starbucks Corporation must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that it is received by them by no later than **noon** Eastern time on February 11, 2022. Following timely filing and service of a Statement of Position by Starbucks Corporation, the Petitioner must complete its Responsive Statement of Position(s) responding to the issues raised in the Employer's and/or Union's Statement of Position and file them and all attachments with the Regional Director and serve them on the parties named in the petition such that they are received by them no later than **noon** Eastern on February 16, 2022.

Pursuant to Section 102.5 of the Board's Rules and Regulations, all documents filed in cases before the Agency must be filed by electronically submitting (E-Filing) through the Agency's website (www.nlrb.gov), unless the party filing the document does not have access to the means for filing electronically or filing electronically would impose an undue burden. Documents filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#)

The Statement of Position and Responsive Statement of Position must be E-Filed but, unlike other E-Filed documents, must be filed by **noon** Eastern on the due date in order to be

timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position and Responsive Statement of Position are not required to be filed. If an election agreement is signed by all parties and returned to the Regional office after the due date of the Statement of Position but before the due date of the Responsive Statement of Position, the Responsive Statement of Position is not required to be filed.

Dated: February 1, 2022

/s/Linda M. Leslie

LINDA M. LESLIE
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 03
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

Starbucks Corporation Employer and Petitioner	Case 03-RC-289802
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AFFIDAVIT OF SERVICE OF: Petition dated February 1, 2022, Notice of Representation Hearing dated February 1, 2022, Description of Procedures in Certification and Decertification Cases (Form NLRB-4812), Notice of Petition for Election, and Statement of Position Form (Form NLRB-505).

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on February 1, 2022, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

Alan I. Model, Attorney at Law
Littler Mendelson, PC
One Newark Center
8th Floor
Newark, NJ 07102-5235
amodel@littler.com
Fax: (973)755-0439

Brittany Cahill, District Manager
Starbucks Corporation
2750 Monroe Ave.
Rochester, NY 14618
bcahill@starbucks.com

Kevin Johnson, President and CEO
Starbucks Corporation
2401 Utah Avenue South, Suite 800
Seattle, WA 98134
kevin.johnson@starbucks.com

February 1, 2022

Date

Andrea Seyfried, Designated Agent of NLRB

Name

/s/ Andrea Seyfried

Signature

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

**DESCRIPTION OF REPRESENTATION CASE PROCEDURES
IN CERTIFICATION AND DECERTIFICATION CASES**

The National Labor Relations Act grants employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity. A party may file an RC, RD or RM petition with the National Labor Relations Board (NLRB) to conduct a secret ballot election to determine whether a representative will represent, or continue to represent, a unit of employees. An **RC** petition is generally filed by a union that desires to be certified as the bargaining representative. An **RD** petition is filed by employees who seek to remove the currently recognized union as the bargaining representative. An **RM** petition is filed by an employer who seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status. This form generally describes representation case procedures in RC, RD and RM cases, also referred to as certification and decertification cases.

Right to be Represented – Any party to a case with the NLRB has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at www.nlr.gov or forward it to the NLRB Regional Office handling the petition as soon as possible.

Filing and Service of Petition – A party filing an RC, RD or RM petition is required to serve a copy of its petition on the parties named in the petition along with this form and the Statement of Position form. The petitioner files the petition with the NLRB, together with (1) a certificate showing service of these documents on the other parties named in the petition, and (2) a showing of interest to support the petition. The showing of interest is not served on the other parties.

Notice of Hearing – After a petition in a certification or decertification case is filed with the NLRB, the NLRB reviews the petition, certificate of service, and the required showing of interest for sufficiency, assigns the petition a case number, and promptly sends letters to the parties notifying them of the Board agent who will be handling the case. In most cases, the letters include a Notice of Representation Hearing. Except in cases presenting unusually complex issues, this pre-election hearing is set for a date 14 business days (excluding weekends and federal holidays) from the date of service of the notice of hearing. Once the hearing begins, it will continue day to day until completed absent extraordinary circumstances. The Notice of Representation Hearing also sets the due date for filing and serving the Statement(s) of Position and the Responsive Statement of Position(s). Included with the Notice of Representation Hearing are the following: (1) copy of the petition, (2) this form, (3) Statement of Position for non-petitioning parties, (4) petitioner's Responsive Statement of Position, (5) Notice of Petition for Election, and (6) letter advising how to contact the Board agent who will be handling the case and discussing those documents.

Hearing Postponement: Requests to postpone the hearing are not routinely granted, but the regional director may postpone the hearing for good cause. A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should include the positions of the other parties regarding the postponement. The request must be filed electronically ("E-Filed") on the Agency's website (www.nlr.gov) by following the instructions on the website. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Statement of Position Form and List(s) of Employees – The Statement of Position form solicits commerce and other information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. In an **RC** or **RD** case, as part of its Statement of Position form, the employer also provides a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional

form for the list is provided on the NLRB website at www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx

Ordinarily the Statement of Position must be filed with the Regional Office and served on the other parties such that it is received by them by noon 8 business days from the issuance of the Notice of Hearing. The regional director may postpone the due date for filing and serving the Statement of Position for good cause. The Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Responsive Statement of Position – Petitioner's Responsive Statement(s) of Position solicits a response to the Statement(s) of Position filed by the other parties and further facilitates entry into election agreements or streamlines the preelection hearing. A petitioner must file a Responsive Statement of Position in response to each party's Statement of Position addressing each issue in each Statement of Position(s), if desired. In the case of an RM petition, the employer-petitioner must also provide commerce information and file and serve a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. Ordinarily, the Responsive Statement of Position must be electronically filed with the Regional Office and served on the other parties such that it is received by noon 3 business days prior to the hearing. The regional director may postpone the due date for filing and serving the Responsive Statement of Position for good cause. The Responsive Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Responsive Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Responsive Statement of Position due date. If a party wishes to request both a postponement of the hearing and a Postponement of the Responsive Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Posting and Distribution of Notice of Petition for Election – Within 5 business days after service of the notice of hearing, the employer must post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and must also distribute it electronically to the employees in the petitioned-for unit if the employer customarily communicates with these employees electronically. The employer must maintain the posting until the petition is dismissed or withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election if proper and timely objections are filed.

Election Agreements – Elections can occur either by agreement of the parties or by direction of the regional director or the Board. Three types of agreements are available: (1) a Consent Election Agreement (Form NLRB-651); (2) a Stipulated Election Agreement (Form NLRB-652); and (3) a Full Consent Agreement (Form NLRB-5509). In the Consent Election Agreement and the Stipulated Election Agreement, the parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent. In the Consent Agreement, the parties also agree that post-election matters (election objections or determinative challenged ballots) will be resolved with finality by the regional director; whereas in the Stipulated Election Agreement, the parties agree that they may request Board review of the regional director's post-election determinations. A Full Consent Agreement provides that the regional director will make final determinations regarding all pre-election and post-election issues.

Hearing Cancellation Based on Agreement of the Parties – The issuance of the Notice of Representation Hearing does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments and the Board agent assigned to the case will work with the parties to enter into an election agreement, so the parties can avoid the time and expense of participating in a hearing.

Hearing – A hearing will be held unless the parties enter into an election agreement approved by the regional director or the petition is dismissed or withdrawn.

Purpose of Hearing: The primary purpose of a pre-election hearing is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit

appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which a labor organization has been certified or is being currently recognized by the employer as the bargaining representative.

Issues at Hearing: Issues that might be litigated at the pre-election hearing include: jurisdiction; labor organization status; bars to elections; unit appropriateness; expanding and contracting unit issues; inclusion of professional employees with nonprofessional employees; seasonal operation; potential mixed guard/non-guard unit; and eligibility formulas. At the hearing, the timely filed Statement of Position and Responsive Statement of Position(s) will be received into evidence. The hearing officer will not receive evidence concerning any issue as to which the parties have not taken adverse positions, except for evidence regarding the Board's jurisdiction over the employer and evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

Preclusion: At the hearing, a party will be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or Responsive Statement of Position(s) or to place in dispute in timely response to another party's Statement of Position or response, except that no party will be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. As set forth in §102.66(d) of the Board's rules, if the employer fails to timely furnish the lists of employees, the employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Conduct of Hearing: If held, the hearing is usually open to the public and will be conducted by a hearing officer of the NLRB. Any party has the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer also has the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses will be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Parties appearing at any hearing who have or whose witnesses have disabilities falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the regional director as soon as possible and request the necessary assistance.

Official Record: An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (Copies of exhibits should be supplied to the hearing officer and other parties at the time the exhibit is offered in evidence.) All statements made at the hearing will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the regional director.

Motions and Objections: All motions must be in writing unless stated orally on the record at the hearing and must briefly state the relief sought and the grounds for the motion. A copy of any motion must be served immediately on the other parties to the proceeding. Motions made during the hearing are filed with the hearing officer. All other motions are filed with the regional director, except that motions made after the transfer of the record to the Board are filed with the Board. If not E-Filed, an original and two copies of written motions shall be filed. Statements of reasons in support of motions or objections should be as concise as possible. Objections shall not be deemed waived by further participation in the hearing. On appropriate request, objections may be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

Election Details: Prior to the close of the hearing the hearing officer will: (1) solicit the parties' positions (but will not permit litigation) on the type, date(s), time(s), and location(s) of the election and the eligibility period; (2) solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election if an election is directed; (3) inform the parties that the regional director will issue a decision as soon as practicable and will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and (4) inform the parties of their obligations if the director directs an election and of the time for complying with those obligations.

Oral Argument and Briefs: Upon request, any party is entitled to a reasonable period at the close of the hearing for oral argument, which will be included in the official transcript of the hearing. At any time before the close of the hearing, any party may file a memorandum addressing relevant issues or points of law. Post-hearing briefs shall be due within 5 business days of the close of the hearing. The hearing officer may allow up to 10 additional business days for such briefs prior to the close of hearing and for good cause. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the regional director. Briefs including electronic documents, filed with the Regional Director must be formatted as double-spaced in an 8½ by 11 inch format and must be e-filed through the Board's website, www.nlr.gov.

Regional Director Decision - After the hearing, the regional director issues a decision directing an election, dismissing the petition or reopening the hearing. A request for review of the regional director's pre-election decision may be filed with the Board at any time after issuance of the decision until 10 business days after a final disposition of the proceeding by the regional director. Accordingly, a party need not file a request for review before the election in order to preserve its right to contest that decision after the election. Instead, a party can wait to see whether the election results have mooted the basis of an appeal. The Board will grant a request for review only where compelling reasons exist therefor.

Voter List – The employer must provide to the regional director and the parties named in the election agreement or direction of election a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular ("cell") telephone numbers) of all eligible voters. (In construction industry elections, unless the parties stipulate to the contrary, also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.) The employer must also include in a separate section of the voter list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge. The list of names must be alphabetized (overall or by department) and be in the same Microsoft Word file (or Microsoft Word compatible file) format as the initial lists provided with the Statement of Position form unless the parties agree to a different format or the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list must be filed electronically with the regional director and served electronically on the other parties named in the agreement or direction. To be timely filed and served, the voter list must be received by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction of elections unless a longer time is specified in the agreement or direction. A certificate of service on all parties must be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

Waiver of Time to Use Voter List – Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 calendar days after the date when the employer must file the voter list with the Regional Office. However, the parties entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.

Election – Information about the election, requirements to post and distribute the Notice of Election, and possible proceedings after the election is available from the Regional Office and will be provided to the parties when the Notice of Election is sent to the parties.

Withdrawal or Dismissal – If it is determined that the NLRB does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the regional director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A STATEMENT OF POSITION FORM

Completing and Filing this Form: The Notice of Hearing indicates which parties are responsible for completing the form. If you are required to complete the form, you must have it signed by an authorized representative and file a completed copy (including all attachments) with the RD and serve copies on all parties named in the petition by the date and time established for its submission. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must EFile your Statement of Position at www.nlrb.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed.**

Note: Non-employer parties who complete this Statement of Position are NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7.

Required Lists: The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx).

Consequences of Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
STATEMENT OF POSITION

DO NOT WRITE IN THIS SPACE

Case No.

03-RC-289802

Date Filed

February 1, 2022

INSTRUCTIONS: Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.

Note: Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7.

1a. Full name of party filing Statement of Position		1c. Business Phone:	1e. Fax No.:
1b. Address (Street and number, city, state, and ZIP code)		1d. Cell No.:	1f. e-Mail Address
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)			
3. Do you agree that the proposed unit is appropriate? <input type="checkbox"/> Yes <input type="checkbox"/> No (If not, answer 3a and 3b)			
a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards)			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.			
Added		Excluded	
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.			
5. Is there a bar to conducting an election in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, state the basis for your position.			
6. Describe all other issues you intend to raise at the pre-election hearing.			
7. The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx . (a) A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) (b) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be <i>added</i> to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be <i>excluded</i> from the proposed unit to make it an appropriate unit. (Attachment D)			
8a. State your position with respect to the details of any election that may be conducted in this matter. Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
8b. Date(s)	8c. Time(s)	8d. Location(s)	
8e. Eligibility Period (e.g. special eligibility formula)	8f. Last Payroll Period Ending Date	8g. Length of payroll period <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)	
9. Representative who will accept service of all papers for purposes of the representation proceeding			
9a. Full name and title of authorized representative	9b. Signature of authorized representative		9c. Date
9d. Address (Street and number, city, state, and ZIP code)			9e. e-Mail Address
9f. Business Phone No.:		9g. Fax No.	9h. Cell No.

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME	CASE NUMBER 03-RC-289802
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1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)

3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION OR FORMATION	B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES
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4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).

7A. PRINCIPAL LOCATION:

7B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. TOTAL:

B. AT THE ADDRESS INVOLVED IN THIS MATTER:

9. DURING THE MOST RECENT (Check the appropriate box): ☐ CALENDAR ☐ 12 MONTHS or ☐ FISCAL YEAR (FY DATES _____)

	YES	NO
A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value. \$ _____		
B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$ _____		
C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$ _____		
D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$ _____		
E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____		
F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____		
G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$ _____		
H. Gross Revenues from all sales or performance of services (Check the largest amount) <input type="checkbox"/> \$100,000 <input type="checkbox"/> \$250,000 <input type="checkbox"/> \$500,000 <input type="checkbox"/> \$1,000,000 or more If less than \$100,000, indicate amount.		
I. Did you begin operations within the last 12 months? If yes, specify date: _____		

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

☐ YES ☐ NO (If yes, name and address of association or group).

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME	TITLE	E-MAIL ADDRESS	TEL. NUMBER
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12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)	SIGNATURE	E-MAIL ADDRESS	DATE
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PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A RESPONSIVE STATEMENT OF POSITION FORM

Completing and Filing this Form: For **RC and RD petitions**, the Petitioner is required to complete this form in response to each timely filed and served Statement of Position filed by another party. For **RM petitions**, the Employer-Petitioner must complete a Responsive Statement of Position form and submit the list described below. In accordance with Section 102.63(b) of the Board's Rules, if you are required to complete the form, you must have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition responding to the issues raised in another party's Statement of Position, such that it is received no later than noon three business days before the date of the hearing. A separate form must be completed for each timely filed and properly served Statement of Position you receive. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must E-File your Responsive Statement of Position at www.NLRB.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed. Note that if you are completing this form as a PDF downloaded from www.NLRB.gov, the form will lock upon signature and no further editing may be made.**

Required List: In addition to responding to the issues raised in another party's Statement of Position, if any, the Employer-Petitioner in an RM case is required to file and serve on the parties a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. This list must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the list in the required form, the list must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx)

Consequences of Failure to Submit a Responsive Statement of Position: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
RESPONSIVE STATEMENT OF POSITION – RC, RD or RM PETITION

DO NOT WRITE IN THIS SPACE

Case No.
03-RC-289802

Date Filed
February 1, 2022

INSTRUCTIONS: If a party has submitted and served on you a timely Statement of Position to an RC, RD or RM petition, the Petitioner must submit this Responsive Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and any attachments on each party named in the petition in this case such that it is received by noon local time, three business days prior to the hearing date specified in the Notice of Hearing. A separate form must be completed for each timely filed and properly served Statement of Position received by the Petitioner. The Petitioner-Employer in a RM case is required to file this Responsive Statement of Position and include an appropriate employee list without regard to whether another party has filed a Statement of Position.

This Responsive Statement of Position is filed by the Petitioner in response to a Statement of Position received from the following party:

The Employer

An Intervenor/Union

1a. Full Name of Party Filing Responsive Statement of Position

1c. Business Phone

1d. Cell No.

1e. Fax No.

1f. E-Mail Address

1b. Address (Street and Number, City, State, and ZIP Code)

2. Identify all issues raised in the other party's Statement of Position that you dispute and describe the basis of your dispute:

a. EMPLOYER NAME/IDENTITY [Box 1a of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

b. JURISDICTION [Box 2 of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

c. APPROPRIATENESS OF UNIT [Boxes 3, 3a and 3b of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

d. INDIVIDUAL ELIGIBILITY [Box 4 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

e. BARS TO ELECTION [Box 5 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

f. ALL OTHER ISSUES [Box 6 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

g. ELECTION DETAILS [Boxes 8a, 8b, 8c, 8d, 8e, 8f, and 8g of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

Full Name and Title of Authorized Representative

Signature of Authorized Representative

Date

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Please fill all necessary fields on the form PRIOR to digitally signing. To make changes after the form has been signed, right-click on the signature field and click "clear signature." Once complete, please sign the form.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Date Filed

2/1/2022

Starbucks Corporation

Employer

and

Workers United

Petitioner

Case No. 03-RC-289802

Date Issued 04/07/2022

City Buffalo

State NY

Type of Election:
(Check one:)

(If applicable check
either or both:)

☐ Stipulation

☐ 8(b) (7)

☐ Board Direction

☒ Mail Ballot

☐ Consent Agreement

☒ RD Direction
Incumbent Union (Code)

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of tabulation of ballots case in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters 30
2. Number of Void ballots 1
3. Number of Votes cast for Workers United 10
4. Number of Votes cast for N/A N/A
5. Number of Votes cast for N/A N/A
6. Number of Votes cast against participating labor organization(s) 3
7. Number of Valid votes counted (sum 3, 4, 5, and 6) 13
8. Number of challenged ballots 2
9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) 15
10. Challenges are not sufficient in number to affect the results of the election.
11. A majority of the valid votes counted plus challenged ballots (Item 9) has not been cast for Workers United

For the Regional Director

Tom M.

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For Starbucks Corporation

☒ Participated via videoconference

For Workers United

☒ Participated via videoconference

For

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3**

STARBUCKS CORPORATION

Employer

and

Case 03-RC-289802

WORKERS UNITED

Petitioner

TYPE OF ELECTION: RD DIRECTED

CERTIFICATION OF REPRESENTATIVE

An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots shows that a collective-bargaining representative has been selected. No timely objections have been filed.

As authorized by the National Labor Relations Board, it is certified that a majority of the valid ballots has been cast for

Workers United

and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Unit: All full-time and regular part-time Baristas, Shift Supervisors, and Assistant Store Managers employed by the Employer at its store located at 2750 Monroe Avenue, Rochester, New York 14618, excluding office clerical employees, guards, professional employees and supervisors as defined in the Act.



April 15, 2022

/s/GREGORY LEHMANN

GREGORY LEHMANN
Acting Regional Director, Region 3
National Labor Relations Board

Attachment: Notice of Bargaining Obligation

NOTICE OF BARGAINING OBLIGATION

In the recent representation election, a labor organization received a majority of the valid votes cast. Except in unusual circumstances, unless the results of the election are subsequently set aside in a post-election proceeding, the employer's legal obligation to refrain from unilaterally changing bargaining unit employees' terms and conditions of employment begins on the date of the election.

The employer is not precluded from changing bargaining unit employees' terms and conditions during the pendency of post-election proceedings, **as long as** the employer (a) gives sufficient notice to the labor organization concerning the proposed change(s); (b) negotiates in good faith with the labor organization, upon request; and (c) good faith bargaining between the employer and the labor organization leads to agreement or overall lawful impasse.

This is so even if the employer, or some other party, files objections to the election pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board (the Board). If the objections are later overruled and the labor organization is certified as the employees' collective-bargaining representative, the employer's obligation to refrain from making unilateral changes to bargaining unit employees' terms and conditions of employment begins on the date of the election, not on the date of the subsequent decision by the Board or court. Specifically, the Board has held that, absent exceptional circumstances,¹ an employer acts at its peril in making changes in wages, hours, or other terms and conditions of employment during the period while objections are pending and the final determination about certification of the labor organization has not yet been made.

It is important that all parties be aware of the potential liabilities if the employer unilaterally alters bargaining unit employees' terms and conditions of employment during the pendency of post-election proceedings. Thus, typically, if an employer makes post-election changes in employees' wages, hours, or other terms and conditions of employment without notice to or consultation with the labor organization that is ultimately certified as the employees' collective-bargaining representative, it violates Section 8(a)(1) and (5) of the National Labor Relations Act since such changes have the effect of undermining the labor organization's status as the statutory representative of the employees. This is so even if the changes were motivated by sound business considerations and not for the purpose of undermining the labor organization. As a remedy, the employer could be required to: 1) restore the status quo ante; 2) bargain, upon request, with the labor organization with respect to these changes; and 3) compensate employees, with interest, for monetary losses resulting from the unilateral implementation of these changes, until the employer bargains in good faith with the labor organization, upon request, or bargains to overall lawful impasse.

¹ Exceptions may include the presence of a longstanding past practice, discrete event, or exigent economic circumstance requiring an immediate response.